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Supreme Court, U.S.
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No. 07-(1)

IN THE

Supreme Court of the United States

Pastor Larry Martin
Petitioner,

v.

Salvador Godinez, as Executive Director of the Cook County Department of Corrections, Thomas Dart, as Cook County Sheriff, and Judge Kathleen M. Pantle, Judge of the Circuit Court of Cook County,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Fourteenth Amendment permits a civil court to incarcerate a person for civil contempt of court for failure to comply with an order of the court when that person was not named in the order violated or a party to, or served in the action in which the order was issued.

Whether the Fourteenth Amendment permits a civil court to incarcerate a clergyman for civil contempt of court for failure to comply with an order of the court when the underlying order violated the First Amendment's church autonomy doctrine by requiring an election for directors of a religious corporation and allowing any natural person to vote in said election.

LIST OF PARTIES TO THE PROCEEDING BELOW

The caption of this case contains the names of all parties to the proceeding in the court below.

CORPORATE DISCLOSURE STATEMENT

None of the parties are publicly traded corporations. Bethlehem Healing Temple Church, Inc. is incorporated under the Illinois General Not for Profit Corporation Act, 805 ILCS 105/101 *et seq.* (West 2002).

· None of the parties have any parent companies or subsidiary corporations.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Larry Martin respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Illinois.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, 1a, is reported at 368 Ill. App. 3d 418, 857 N.E.2d 794, 306 Ill. Dec. 395 (2006){TA \s "ACLU v. Schundler, 104 F.3d 1435 (3rd Cir. 1997)" \c 1 \l "*American Civil Liberties Union of New Jersey v. Schundler*, 104 F.3d 1435 (3d Cir. 1997)"}.

The opinion of the Circuit Court, Apx. 24a, is unreported. The Illinois Supreme Court's Denial of the Petition for Leave to Appeal, Apx 21a, is reported at 223 Ill. 2d 637, 865 N.E.2d 969 (Mar. 28, 2007). The denials of Petitioners' Motions for Reconsideration of that Order, Apx. 22a, 23a, are unreported. The Illinois Supreme Court's Denial of Emergency Motion for Leave to File Emergency Complaint for Writ of Habeas Corpus, Apx. 32a, is unreported.

JURISDICTION

The decision of the Illinois Supreme Court denying Petitioner's Emergency Motion for Leave to File Emergency Complaint for Writ of Habeas Corpus was entered on August 27, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

{ TA \s "First Amendment" }{ TA \l "First Amendment" \s "First Amendment" \c 7 }Constitution of the United States, Amendment I{ TA \l "Constitution of the United States, Amendment I" \s "Constitution of the United States, Amendment I" \c 7 } provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States, Amendment XIV provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

This Petition involves both the Fourteenth Amendment right of a citizen not to be incarcerated for civil contempt of court where they have not violated any order of a court directed at them, and the First Amendment right of a church to be free from government intrusion in matters of church membership, faith and polity. The underlying proceedings below affirmed a court-appointed election administrator's decision to ignore undisputed religious criteria for membership in the Bethlehem Healing Temple Church, an Illinois religious corporation, and to force an election for the Church's directors where anyone who turned out to vote was permitted to do so, regardless of religious or other qualifications for church membership. Such an unprecedented invasion into church polity is contrary to the long-standing holdings of this Court that secular courts "'cannot decide who ought to be members of [a] church,'" *Watson v. Jones*, 80 U.S. 679, 730 (1871){ TA \l "*Watson v. Jones*, 80 U.S. 679, 730 (1871)" \s "Watson v. Jones, 80 U.S. 679, 730 (1871)" \c 1 } (quoting *Shannon v. Frost*, 3 B. Monro, 253 (Ky. 1842), and contrary to the decisions of several state courts of last resort that have rejected such unconstitutional interference with church autonomy. Subsequently, a clergyman, who was not a party to the underlying action and had not been ordered by the court to take any action at all, was incarcerated for civil contempt of court because the defendants in the underlying action had not obeyed the court's order to turn over control of the church to the plaintiffs.

STATEMENT OF THE CASE

Petitioner seeks review of a decision of the Illinois Supreme Court that denied the petitioner's Emergency Motion for Leave to File Emergency Complaint for Writ of Habeas Corpus to the Illinois Supreme Court while he was incarcerated in the Cook County Jail for civil contempt of court, by order of the Honorable Kathleen M. Pantle. He was found in civil contempt because the defendants in the underlying action had not complied with the court's order to turn over the property and records of the church after an election held under the supervision of a court appointed election administrator. The decisions of the election administrator were confirmed by the Circuit Court, Cook County on September 23, 2004 and by the Appellate Court of Illinois. A petition for leave to appeal to the Illinois Supreme Court in the underlying action was denied.

A. Background.

The facts relevant to this Petition are straightforward and undisputed. Subsequent to the death of Bishop A.C. Richards, the former spiritual leader of Bethlehem Healing Temple Church, Inc., an action was brought in the Circuit Court Of Cook County, County Department, Chancery Division by Roosevelt Marsaw, Chester Hudson, Clarence Brownlow, Loncie McCray and Eugene Price, George Gibson, Living Witness of the Apostolic Faith, Inc. and Clord Jordan (hereinafter the "Marsaw group") to wrest control of the religious corporation from the existing directors of the church, the defendants Marcenia J. Richards, Lela Walker, Marie Oliver, Michael Morris, A.C. Richards Jr., and Bethlehem Healing Temple Church, Inc. (hereinafter the "Defendants"). 857 N.E.2d at 797; Apx. 2a. This action

followed a schism in the Church that resulted in certain members of the corporation, represented by the Marsaw group, to begin "hold[ing] church services elsewhere." 857 N.E.2d at 797; Apx. 4a.

The Petitioner, Pastor Larry Martin, was not at that time associated with the Church. He subsequently became a ministerial employee of the church. At no time was he a director, nor was he ever made a party to the court proceedings. At no time did he file an appearance or motion in that proceeding.

Membership in the Church required an individual to be, *inter alia,* "baptized in Jesus' name and filled with the Holy Ghost, ..." 857 N.E.2d at 797; Apx. 3a. Originally, the trial court held that examination of such issues of church membership, control and leadership would constitute an impermissible inquiry into religious doctrine and dismissed the Marsaw group's complaint.[1] 857 N.E.2d at 796; Apx. 2. However, the Appellate Court reversed that judgment and remanded to resolve these issues of church polity. *Id.*

B. The Circuit Court Proceedings.

On remand, the trial court denied cross-motions for summary judgment and held a two-week bench trial. 857 N.E.2d at 797; Apx. 3a. The trial court ordered an election to be held for the Church's directors. 857 N.E.2d at 796, 798-

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[1] It is also undisputed that, although required by its 1980 Articles of Incorporation, the Chicago-based Bethlehem Healing Temple Church never held an election for its Directors before this litigation commenced. 857 N.E.2d at 797, Apx. 4.

99; Apx. 6a-7a. The court found, and the Marsaw group admitted, that there were religious qualifications for membership in the Church:

> The church members who voted in the 1984 election [for Pastor] were those who made contributions, or tithes, to the church *and who were "baptized in Jesus' name and filled with the Holy Ghost,"* in the words of numerous witnesses at trial.

857 N.E.2d at 797; Apx. 3a (emphasis added).

The trial court originally requested each side to submit "a list of church members who should be allowed to vote" for directors of the Church. 857 N.E.2d at 798; Apx. 6a. the Defendants disputed that the individuals named in the Marsaw group's list were members in good standing with the Church. 857 N.E.2d at 798-99; Apx. 6a. "As the trial court noted, 'little overlap' occurred in the parties' respective membership lists." *Id.* Over Defendants' objection, an election for Church directors was ordered to take place at the Daley Center in Chicago. 857 N.E.2d at 798; Apx. 7a.

The trial court's appointed election administrator then permitted anyone who arrived at the Daley Center during the appointed time to vote. 857 N.E.2d at 801; Apx. 7a. Voters included those "whose names were not included on any list of eligible voters [and] who did not have a valid photo identification." 857 N.E.2d at 798; Apx. 7a. The "members" of the Church entitled to vote in the election were therefore self-selecting.

Objecting to this entire process, the Defendants did not

participate in the election. 857 N.E.2d at 799; Apx. 7a. "The Richards group and its supporters evidently boycotted the election, and no votes were tallied in favor of their candidates, ..." *Id.* All votes cast, therefore, were in favor of the Marsaw group. *Id.* The trial court affirmed the results of the election and ordered that the newly appointed individuals were the "Directors" of the Church. *Id.* The trial court subsequently ordered the Church evicted from the Church property by October 6, 2004.

Petitioners filed a timely notice of appeal from the September 23, 2004 Order.

C. The Appellate Court Proceedings.

On September 22, 2006, the Appellate Court, First District affirmed the circuit court's judgment. 857 N.E.2d at 805; Apx. at 1a. The court rejected the Church's First Amendment defense, holding without reference to any applicable controlling law:

> Individuals were allowed to vote even if they did not provide additional documentation of their membership in the church. The election administrator's report indicates that every person who attempted to cast a ballot was allowed to do so.
>
> Based on those facts, the trial court's actions did not represent a judicial inquiry into religious doctrine. The court also did not impose its own membership requirements.

857 N.E.2d at 801; Apx. 12a-13a. The court did not find relevant the undisputed evidence that the Church's membership criteria were religious in nature. *Id.* It simply ignored them.

Defendants filed a petition for rehearing, which was denied on December 1, 2006. A petition for review to the Illinois Supreme Court was timely filed, and denied on March 28, 2007.

D. The Civil Contempt Proceedings.

On June 12, 2007, the Circuit Court, Cook County, issued a turnover order, directing the Defendants in the underlying action to turnover certain church property to the Plaintiffs by

June 29th, 2007. Petitioner Pastor Martin was not named in that order in any way.

On July 5, 2007, the Honorable Kathleen M. Pantle, Circuit Court Judge, signed a "Rule to Show Cause" presented by the Plaintiffs' counsel, requiring that

> Defendants and each of them except Michael Morris are ordered to appear personally before this Court on July 19th at 10:30 a.m., in Room 2410, Daley Center, and show cause why each of them should not be held in civil contempt for the violation of this Court's order alleged in the Petition and committed to the County Jail until they comply. Larry Martin is ordered to appear personally before the Court at the same time and place and show cause why he should not be held in civil contempt for the violation of this Court's order alleged in the Petition and committed to the County Jail until he complies.

The order referred to was the June 12, 2007 turnover order addressed to the Defendants, not the Petitioner.

On July 19, 2007, Judge Pantle issued an order holding Pastor Martin in indirect civil contempt for failing to comply with the June 12, 2007 order. This July 19, 2007 order incorrectly designated Petitioner Martin as a Defendant in the action. The court

> FOUND AND ORDERED
>
> This Court entered a lawful Order on June 12, 2007 ("turnover Order") commanding defendants to turn over property belonging to Bethlehem Healing Temple

Church ("Bethlehem") to plaintiffs by noon on June 29, 2007.

Each defendant has been properly served with this turnover Order of June 12, 2007. Defendants and each of them have violated this Order by failing to turn over the property belonging to Bethlehem as set forth in the Order.

Defendants and each of them have been given reasonable opportunity to comply with this Order, including, but not limited to an encounter between plaintiffs and plaintiffs' counsel on June 29, 2007, shortly after 12:00 p.m.

Defendants' refusal to comply is willful and contumacious.

Accordingly an adjudication of civil contempt is hereby entered, and sanctions are imposed as follows:

Each defendant shall be fined $200.00 per day until the court Order of June 12, 2007 is complied with. The fine shall be paid to the Clerk of the Circuit Court of Cook County. Any monies belonging to Bethlehem shall NOT be used for this purpose. Only personal monies belonging to defendants shall be used.

Defendants may purge themselves of this contempt by delivering to plaintiffs or plaintiffs' counsel, the law firm of Sonneschein, Nath & Rosenthal, L.L.C., the property of Bethlehem.

> This matter is set for further status on July 23, 2007 at 1:30 p.m. at which time this Court will consider further sanctions should the Order not be complied with by that date and time.

On July 25th, 2007 Petitioner Pastor Martin was taken into custody. On August 10, 2007, Pastor Martin filed a *pro se* Emergency Motion For Leave to File Emergency Complaint For Writ Of Habeas Corpus in the Illinois Supreme Court. He argued that, as he was not a party to the underlying action and as the turnover Order was not addressed to him, did not name him, and did not order him to do anything, the Cook County Circuit Court had not obtained jurisdiction over him and he had not violated any provision of that order. Pastor Martin remained incarcerated for fifty days until he was released on September 12, 2007.

On August 27, 2007 the Illinois Supreme Court denied Petitioner's Emergency Motion For Leave to File Emergency Complaint For Writ Of Habeas Corpus. Apx. 32a.

REASONS FOR GRANTING THE WRIT

The Illinois courts are in conflict with other jurisdictions on the critically important question of whether secular authorities may create their own criteria for membership in a church. Specifically, a government official—whose actions were affirmed by the courts below—ignored the *undisputed* religious criteria for membership within Bethlehem Healing Temple Church and instead permitted anyone to vote for its directors in the context of a judicial proceeding. Such actions raise an important issue of federal law that conflicts with the decisions of this Court and the courts of other States.

1. This case is an appropriate vehicle to resolve the issue presented.

The relevant facts are not in dispute here. The trial court and the election administrator it appointed established their own criteria for Church membership, ignoring the criteria that was agreed to by all parties. Those criteria were successively diluted, until at the election for the Church's Directors, the trial court's appointed election administrator permitted anyone who showed up to vote. 857 N.E.2d at 801; Apx. at 7a. Various categories of voters were designated, including those "whose names were not included on any list of eligible voters or who did not have a valid photo identification." 857 N.E.2d at 798-99; Apx. at 7a.

Respondents acknowledged throughout this litigation that being a member in good standing of the Church involves religious determinations, including being:

> [B]aptized in water [and] filled with the Holy Ghost . . . .

First Amended Complaint for Declaratory and Injunctive Relief ¶ 17. The Illinois Appellate Court recognized that those members permitted to vote in a Church election were

> Those who made contributions, or tithes, to the church and who were "baptized in Jesus' name and filled with the Holy Ghost," in the words of numerous witnesses at trial.

857 N.E.2d at 797; Apx. 3a.[2]

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[2] Other evidence of religious membership criteria, including whether an individual is filled with evidence of speaking tongues, has "Complete Repentance," and "Walk[s] according to Ordinances and Rules governing the Church"

Ignoring these requirements, which on their face require religious determinations, the election administrator permitted "every person who attempted to cast a ballot . . . to do so." 857 N.E.2d at 801; Apx. 7a. This action was upheld by the Circuit Court, Apx. 28-30, and affirmed by the Appellate Court. 857 N.E.2d at 801; Apx. 20a. Petitioners filed a petition for leave to appeal to the Illinois Supreme Court, which was denied. 223 Ill. 2d 637, 865 N.E.2d 969 (Mar. 28, 2007); Apx. 21a. As discussed above, a minister of the Church that was not even a party to the proceedings was then incarcerated as part of the enforcement proceedings on these orders.

2. The Illinois courts have decided this important issue of federal law in a manner that conflicts with relevant decisions of this Court.

This Court has stated in no uncertain terms that secular courts "'cannot decide who ought to be members of [a] church . . . .'" *Watson v. Jones*, 80 U.S. 679, 730 (1871){ TA \s "Watson v. Jones, 80 U.S. 679, 730 (1871)" } (quoting *Shannon v. Frost*, 3 B. Monro, 253 (Ky. 1842). While questions of ownership and control over property may be heard in the civil courts,

> [I]t is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character,—a matter over which the civil courts exercise no jurisdiction,—a matter which concerns theological controversy, church discipline, ecclesiastical government, *or the conformity of the members of the church to the standard of morals required of them*,—becomes the

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exists in the record. All parties have admitted that religious criteria exist.

subject of its action.

Id. at 733 (emphasis added). The next year, the Court reaffirmed this basic principle in a case involving the ownership and control of church property:

> This is not a question of membership of the church, nor of the rights of members as such. It may be conceded that we have no power to revise or question ordinary acts of church discipline, or of excision from membership. We have only to do with rights of property. As was said in *Shannon v. Frost, we cannot decide who ought to be members of the church*, ...

Bouldin v. Alexander, 82 U.S. 131, 139-40 (1872) (footnote omitted, emphasis added).[3]

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[3] More than a hundred years later, Justice Brennan wrote:

> [R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: "select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected by the [Free Exercise] [C]lause."

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 341 (1987){ TA \l "Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 341

In *Jones v. Wolf*, 443 U.S. 595, 608-09 (1979), this Court stated that { TA \l "*Jones v. Wolf*, 443 U.S. 595 (1979)" \s "Jones v. Wolf, 443 U.S. 595, 608 (1979)" \c 1 }judicial proceedings which "involve[d] considerations of religious doctrine and polity" would "appear to . . . usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners represent the 'true congregation'" and would thus violate the Court's church autonomy doctrine. While the Court authorized judicial resolution of church *property* disputes under a "neutral principles of law approach," *id.* at 602-02, it was careful to note that "[c]ertainly, there was no dispute in the present case

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(1987)" \s "Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 341 (1987)" \c 1 } (Brennan, J., concurring) (quoting { TA \l "Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373 (1981)" \s "Douglas Laycock, Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy, 81 Colum. L. Rev. 1373, 1389 (1981)" \c 3 }Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1389 (1981){ TA \s "Douglas Laycock, Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy, 81 Colum. L. Rev. 1373, 1389 (1981)" } (alterations in original). *See also Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952){ TA \l "*Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952)" \s "Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94, 116 (1952)" \c 3 } (religious institutions have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.").

about the identity of the duly enrolled members of the Vineville church . . . ." *Id.* at 607. This instant case presents exactly that question.

What the lower court did in this action was precisely to ignore the religious criterion for membership that both parties agreed upon. It decided that, contrary to the positions of all parties to this litigation, *no* standards of morality or belief would be required:

> Defendants further contend that a civil court cannot involve itself into the issue of membership in a religious organization. They argue that the trial court's decision regarding church membership necessarily involved inquiry into religious doctrine because the qualifications for membership are "purely religious."
>
> Defendants argue that they submitted a list of members under protest, and they challenge the affidavits that each voter submitted attesting to his or her baptism, church contribution and/or attendance at church services. They assert that the affidavits represented a "rewriting" of the conditions of church membership *because the court removed the religious component of membership.*
>
> . . . . Individuals were allowed to vote even if they did not provide additional documentation of their membership in the church. The election administrator's report indicates that every person who attempted to cast a ballot was allowed to do so.

857 N.E.2d at 798-99; Apx. at 12a (emphasis added). This is not disputed; in fact, the Illinois court explicitly sanctioned the Circuit Court's (and its election administrator's) actions.

This holding runs directly contrary to this Court's unequivocal holdings that secular courts must not delve into matters of church membership.[4] Furthermore, this case does not even present the more difficult issue of competing views of church membership; here, the parties all agree that certain religious criteria exist. The lower courts eliminated them.

3. The Illinois courts have decided this important issue of federal law in a manner that conflicts with the decisions of other States' courts.

Not only does the Illinois court's decision directly contradict long-standing precedents of this Court, but it also conflicts with decisions of several States' courts of last resort. As the typical case arises in the context of the application of a State's corporation laws, these invariably are found in state court decisions. Nevertheless, the issue presented is a federal one.

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[4] The Appellate Court attempted to escape the holdings of this Court by reasoning that allowing "every person who attempted to cast a ballot . . . to do so" did not result in the court "impos[ing] its own membership requirements." This is logically untenable. To eliminate all agreed-upon ecclesiastical standards for membership *is* to make a determination on religious membership: that no such criteria exist. The criteria used in the election were precisely those created by no one other than the election administrator. He abrogated all the Church's criteria for membership, stripped the Church of its right to establish its own membership criteria and required it to treat *anyone* as if they were a full member. This open membership scheme was imposed by the court below.

Indiana. In rejecting the claimed right of an individual to be buried in a Catholic cemetery, the Supreme Court of Indiana held that "No power save that of the church can rightfully declare who is a Catholic. The question is purely one of church government and discipline, and must be determined by the proper ecclesiastical authorities." *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888){ TA \l "*Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888)" \s "Dwenger v. Geary, 14 N.E. 903, 908 (Ind. 1888)" \c 1 }.

South Carolina. The Supreme Court of South Carolina held that it had no jurisdiction under the First Amendment over a church control case that presented a factual scenario nearly identical to the case at bar. *Knotts v. Williams*, 319 S.E.2d 473 (S.C. 1995){ TA \l "*Knotts v. Williams*, 319 S.E.2d 473 (S.C. 1995)" \s "Knotts v. Williams, 319 S.E.2d 473 (S.C. 1995)" \c 1 }. That court held that "[i]t is not the function of courts . . . to dictate procedures for a church to follow" where the trial judge "determine[d] what percentage of no-confidence votes was required to remove [church official] and *which members were eligible to participate in the vote*." *Id.* at 290-91 (emphasis added).

Massachusetts. As in *Knotts*, the Supreme Judicial Court of Massachusetts held that it lacked jurisdiction to hear claims about, *inter alia*, whether members of a church parish retained their membership subsequent to certain acts undertaken which affected whether they were in communion with the parish. *Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts*, 688 N.E.2d 923 (Mass. 1997){ TA \l "*Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts*, 688 N.E.2d 923 (1997)" \s "Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts, 688 N.E.2d 923 (1997)" \c 1 }. The court held that it was "persuaded that in this case the dispute is one of religious law and polity—the authority of the bishop and Diocesan convention to determine how members of a church vestry

may be elected, whether a corporation member is in "communion" with the Parish, and whether the corporation's constitution may be amended unilaterally in violation of canonical mandates. We conclude that the First Amendment requires that the complaint be dismissed for lack of jurisdiction." *Id.* at 934.

Texas. Recently, the Supreme Court of Texas also refused to permit that State's courts to delve into questions of church membership. *C.L. Westbrook, Jr. v. Penley*, __ S.W.2d __, 2007 WL 1861168 (Tex. June 29, 2007){ TA \l "*C.L. Westbrook, Jr. v. Penley*, __ S.W.2d __, 2007 WL 1861168 (Tex. June 29, 2007)" \s "C.L. Westbrook, Jr. v. Penley, __ S.W.2d __, 2007 WL 1861168 (Tex. June 29, 2007)" \c 3 }. It too refused to apply the "neutral principles of law" principle, as the case did not involve a church property dispute. 2007 WL 1861168, at *8. Citing *Watson, supra*, it held that "[c]ourts have no jurisdiction to 'revise or question ordinary acts of church discipline' and 'cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.'" *Id.* Citing an earlier decision, it recognized that

> Church relationship stands upon a different and higher plane, and the right of a church to decide for itself whom it may admit into fellowship or who shall be expelled or excluded from its fold cannot be questioned by the courts, when no civil or property rights are involved.

Id. at *6 (quoting *Minton v. Leavell*, 297 S.W. 615, 621-22 (Tex. Civ. App.-Galveston 1927, writ ref'd){ TA \l "*Minton v. Leavell*, 297 S.W. 615, 621-22 (Tex. Civ. App.-Galveston 1927, writ ref'd)" \s "Minton v. Leavell, 297 S.W. 615, 621-22 (Tex. Civ. App.-Galveston 1927, writ ref'd)" \c 3 }.

The decisions of several intermediate appellate courts are also in conflict with the Illinois court's decision. *See, e.g., Anderson v. Watchtower Bible and Tract Soc. of New York, Inc.*, 2007 WL 161035, slip op. (Tenn. Ct. App. Jan. 19, 2007){ TA \l "*Anderson v. Watchtower Bible and Tract Soc. of New York, Inc.*, 2007 WL 161035, slip op. (Tenn. Ct. App. Jan. 19, 2007)" \s "Anderson v. Watchtower Bible and Tract Soc. of New York, Inc., 2007 WL 161035, slip op. (Tenn. Ct. App. Jan. 19, 2007)" \c 3 } ("The Church argues that the freedom of religious bodies to determine their own membership is such a fundamentally ecclesiastical matter that courts are prohibited from adjudicating disputes over membership or expulsion. We agree."); *Solid Rock Baptist Church v. Carlton*, 347 N.J. Super. 180, 197-98, 789 A.2d 149 (App. Div. 2002){ TA \l "*Solid Rock Baptist Church v. Carlton*, 347 N.J. Super. 180, 197-98, 789 A.2d 149 (App. Div. 2002)" \s "Solid Rock Baptist Church v. Carlton, 347 N.J. Super. 180, 197-98, 789 A.2d 149 (App. Div. 2002)" \c 3 } ("And assuming the inquiry into custom, practice, and usage at Solid Rock uncovers *who* makes the eligibility decision, further investigation need be made as to *why* the church chose its forms of authority and methods of decision-making. An inquiry of this type and its resolution by a civil court 'would constitute an "establishment of religion" with a vengeance . . . .'"); *Ebenezer Mar Thoma Church v. Alexander*, 279 A.D.2d 548, 549, 719 N.Y.S.2d 297 (2001){ TA \l "*Ebenezer Mar Thoma Church v. Alexander*, 279 A.D.2d 548, 549, 719 N.Y.S.2d 297 (2001)" \s "Ebenezer Mar Thoma Church v. Alexander, 279 A.D.2d 548, 549, 719 N.Y.S.2d 297 (2001)" \c 3 } ("[T]he issue[] of whether the individual plaintiffs are members in good standing within the church [is] not reviewable by a secular court of law . . . .").

In each of these cases, the courts could have simply turned a blind eye to issues of faith, religious discipline or ecclesiastical rule and declared that any individual who so requested was automatically a member in good standing of

the particular religious organization or faith, as the Illinois courts below did. However, doing so would have—as these courts rightly determined—both ignored the clear pronouncements of this Court and eviscerated the fundamental First Amendment principle of church autonomy.

4. The Illinois Supreme Court's refusal to grant leave to Pastor Martin to petition for writ of habeas corpus violates the Fourteenth Amendment.

Finally the Petitioner, who was a clergyman whose duties were clerical, was jailed on July 25th, 2007 in order to compel compliance with the order to turn over all property of the Church to the Marsaw group pursuant to the election.

Pastor Martin was not a party to the suit, nor was he named in the turnover order. He did not have control over the Church property or the Defendants.

In *Burnham v. Superior Court*, 495 U.S. 604, 608-609 (1990), this honorable Court noted the ancient rule that the judgment of a court lacking jurisdiction is void and that in *Pennoyer v. Neff*, 95 U.S. 714, 732 (1878) this Court held "that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well."

"It has long been the constitutional rule that a court cannot adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant. *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418 (1957).

Under Illinois law a judgment rendered without in personam jurisdiction is also invalid. "A void judgment is one entered by a court without jurisdiction of the parties or the subject matter or that lacks "the inherent power to make

or enter the particular order involved." *People v. Wade*, 116 Ill.2d 1 at 5, 506 N.E.2d 954 (1987).

Jurisdiction may not be obtained simply by citing a person not a party or under any court ordered duty to perform an action. "Contempt is no more than a tool to enforce the authority of the court in matters where it has jurisdiction. To contend, therefore, that the jurisdiction itself is derived from the contempt statute begs the question." *Special Prosecutor of State of N. Y. v. U. S. Attorney for Southern Dist. of New York, 375 F.Supp.* 797, 807 (S.D.N.Y. 1974).

Thus Petitioner was deprived of due process of law when he was jailed for contempt of court when the court had never obtained jurisdiction over his person.

Furthermore since the June 12th order that the Petitioner was found to be in contempt of was not addressed to him and he in fact had never been ordered to take any action, the court had no basis on law for finding him in contempt for violating that order. In *Spallone v. U.S.*, 493 U.S. 265 (1990), this honorable Court held that the portion of the District Court's July 26 order imposing contempt sanctions against petitioner individual council members if they failed to vote in favor of the ordinance was an abuse of discretion under traditional equitable principles. Petitioners were never parties to the action, nor were they found to be individually liable for any of the violations upon which the remedial order was based.

Illinois courts have also held that persons not named in the orders allegedly violated could not be held in contempt of court. *People v. Mette*, 21 Ill.App.3d 774 at 776, 316 N.E.2d 106 (Ill.App. 1974), *Chambers v. City of Chicago et al.*, 270 Ill.App. 217 (Ill.App. 1933).

In effect the Petitioner was held hostage to compel the Defendants, the persons named in the June 12th order to

comply. That is an abuse of the contempt power that is not permitted under the Fourteenth Amendment.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

Respectfully submitted,
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November 21, 2007

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APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIFTH DIVISION.

Roosevelt MARSAW, Chester Hudson, Clarence Brownlow, Loncie McCray, Eugene Price, George Gibson and Clord Jordan, Plaintiffs-Appellees,

v.

Marcenia J. RICHARDS, Lela Walker, Marie Oliver, Michael Morris, A.C. Richards, Jr., and Bethlehem Healing Temple Church, Inc., Defendants-Appellants.

No. 1-04-2902.

Sept. 22, 2006.
Rehearing Denied Dec. 1, 2006.

Law Office of Roman P. Storzer, Washington, D.C. (Roman P. Storzer, of counsel) and Burch and Associates, Chicago (Clarence L. Burch, of counsel), for Appellants.
Sonnenschein Nath & Rosenthal LLP, Chicago (William T. Barker, Terrance A. Norton and John R. Labbé, of counsel), for Appellees.

Justice GALLAGHER delivered the opinion of the court:
Reminiscent of the Israelites' flight from Egypt, this ongoing dispute over the leadership and control of the Bethlehem Healing Temple Church, Inc., in Chicago has followed an arduous and contorted path. We previously remanded to the trial court for consideration of plaintiffs' complaint after concluding the issues raised did not involve an impermissible inquiry into religious doctrine. On remand, plaintiffs amended their complaint, and after a bench trial, the court ordered an election of new directors of the church, at which some of the plaintiffs were selected.

This case is now before this court for a third time. Defendants, who represent one faction of church members, again contend that the trial court violated the church's

autonomy under the first amendment to the United States Constitution by determining the church's membership and by further intruding on matters of church governance. For the reasons that follow, we affirm the judgment of the trial court.

BACKGROUND

Plaintiffs Roosevelt Marsaw, Chester Hudson, Clarence Brownlow, Loncie McCray, Eugene Price, George Gibson and Clord Jordan represent one faction of the congregation of the Bethlehem Healing Temple Church, located at 12 South Oakley in Chicago. Defendants Marcenia Richards, Lela Walker, Marie Oliver, Michael Morris and A.C. Richards, Jr., represent an opposing group of congregants. This dispute over the church's leadership arose after the August 2001 death of Bishop A.C. Richards (the father of defendants Marcenia and A.C. Richards, Jr.).[FN1] The Marsaw group accused Bishop Richards of misusing about $70,000 in church funds for personal expenses between 1999 and 2001.

> FN1. For clearer identification and ease of discussion, we occasionally refer to plaintiffs as "the Marsaw group" and to defendants as "the Richards group."

The trial court granted defendants' motion to dismiss plaintiffs' complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2000)), stating that it could not interfere in a religious dispute. Plaintiffs appealed that ruling to this court. This court remanded the case to the trial court, holding that the trial court should make factual findings and that it could apply a "neutral principles" analysis to determine which group should control the church, without necessarily touching on religious considerations.

On remand, plaintiffs amended their complaint to include three counts. In count I, the Marsaw group alleged that Marsaw, Hudson, Brownlow, McCray and Price were the lawful directors of the church and sought a declaratory

judgment stating, *inter alia*, that the Richards group lacked authority over church affairs and should account for church property. The complaint alleged that Marsaw was the only surviving member of the church's original board of directors and that in 2003, he "filled the vacancies in the board by electing Hudson, Brownlow, McCray and Price as directors." Count II, which was pled in the alternative, sought an election of directors of the church, with the roster of eligible voters to include those "generally recognized as church members." Count III sought an order granting the Marsaw group possession of the church and access to church records and funds.

The court held a two-week bench trial at which the parties presented testimony about how pastors and members of the board of directors had been selected over the years. The church was incorporated in 1980 under the Illinois General Not for Profit Corporation Act (805 ILCS 105/101 *et seq.* (West 2002)). In 1984, the church members elected A.C. Richards as pastor to succeed the late Charles Poole, who had also been chosen in an election. The church members who voted in the 1984 election were those who made contributions, or tithes, to the church and who were "baptized in Jesus' name and filled with the Holy Ghost," in the words of numerous witnesses at trial.

In 2000, Richards' health began to decline. During the same period, the church building began to deteriorate. More than one witness for the Marsaw group testified that although members of the congregation contributed to the church's building fund, Richards told them no money was available to make repairs and that additional funds would have to be raised for that purpose. Richards began to lose the loyalty and support of the congregation. Richards appointed the defendants to the board of directors in July 2000.

In May 2001, a group of 212 church members voted 192 to 20 to remove Richards as pastor.[FN2] Before Richards died in August 2001, he appointed his daughter Marcenia to succeed him as pastor. After Richards' death, church members who

were loyal to Richards continued to lead the services. Some of the plaintiffs and those in the Marsaw faction of the congregation intervened, and arguments and physical confrontations erupted which led to police being called to the church. The majority of the congregation, including plaintiffs, began to hold church services elsewhere.

> FN2. A.C. Richards, Jr., testified for the defense that those "loyal to Richards" were "not allowed to vote," including himself. However, Richards also stated that about half of those who cast votes were loyal to his father.

Witnesses offered differing testimony as to how members of the church's board of directors were selected. A.C. Richards, Jr., testified that board members were chosen "by appointment, recommendation and experience." Marie Oliver testified that the elder Richards appointed her to the board in 2000. Oliver stated that although the articles of incorporation state that board members are to be elected by church members, that practice was not followed. Some church members testified that despite being active in the church, they did not know that the church's corporate structure called for the election of directors.

Regarding church membership, Marcenia Richards testified that was a "purely religious matter" to be determined by the pastor. However, when she was asked, somewhat hypothetically, how she would know if someone was a member of the church, she replied that she would have to review that person's church attendance and a record of his or her contributions.

In 2003, church members received notice of an election of a board of directors, which Marsaw oversaw and at which Marsaw, Hudson, Price, McCray and Brownlow were elected. (According to plaintiffs' brief, Marsaw appointed those individuals in February 2003 and called for a churchwide election in July 2003 at which those candidates

were elected by the membership. The Marsaw group contends on appeal that despite the court-ordered election that immediately preceded this appeal, the 2003 board is the properly constituted board). In 2004, another election was held in similar fashion at which the first four of those five were reelected, with James Ketchum chosen in place of Brownlow.

At the close of evidence, the Marsaw group argued that instead of creating a hierarchical structure for the church under the Religious Corporation Act (805 ILCS 110/0.01 *et seq.* (West 2002)), Poole had formed the church as a not-for-profit corporation. The Marsaw group asserted that the 1980 articles of incorporation governed and that under the "special provisions" to the articles, annual meetings were to be held on the second Tuesday of July "for the purpose of electing directors."

The Richards group countered that Marsaw had no authority to oversee the 2003 election of directors because he was merely a holdover member of the original board. The Richards group contended that despite the "special provisions," Marsaw and the other members never before raised the issue of the lack of an annual election of church directors, and the Richards group argued that the Marsaw group should not be allowed to raise that issue now when Poole and the elder Richards are no longer present to provide testimony. The Richards group argued that the articles of incorporation were effectively amended by nonuse. It further contended that the corporate structure was formed merely to hold the church's property and that the trial court should not vest decision-making power in the congregation.

The Election and the Trial Court Judgment

At the court's request, plaintiffs and defendants submitted written memoranda proposing election procedures, and the court then set out written criteria for those who could vote in the election. After discussing the option of holding the

election at or near the church, the trial court ordered the election take place during a four-hour period on September 21, 2004, in the Daley Center courtroom in which the trial had been held.[FN3]

> FN3. At one point, in response to the size of the possible voter turnout, the trial court noted that the process may be too unwieldy and might compromise security at the Daley Center. The court gave the parties the option of conducting an unsupervised election at a time and place of their choosing.

Each side submitted a list of church members who should be allowed to vote, with defendants maintaining their challenge to the court's authority to decide church membership. As the trial court noted, "little overlap" occurred in the parties' respective membership lists. A third list was compiled of members of the congregation who were eligible to vote in the 1984 election of Richards as pastor to replace the outgoing Poole.

The court appointed an election administrator to oversee the election process and report the results. The administrator's report listed five categories of voters. Category A (which accounted for 53 of the 284 ballots cast) included the members of the church who had been eligible to vote in the 1984 election. Categories B (7 ballots) and C (189 ballots) included, respectively, those whose names were on the lists provided by plaintiffs and defendants before trial and who either did or did not present additional documentation to verify their membership in the church. Category D (21 ballots) included those on the plaintiffs' and defendants' lists who were between the ages of 12 and 17 years old. Category E (14 ballots) included those whose names were not included on any list of eligible voters or who did not have a valid photo identification. Together with his or her completed ballot, each voter submitted an affidavit indicating the applicability of one or more of the following criteria: (1) their baptism in the Bethlehem Healing Temple Church; (2)

their regular contributions to the church; and/or (3) regular attendance of church services.

The ballot listed five members of the Richards group and five members of the Marsaw group. The Richards group and its supporters evidently boycotted the election, and no votes were tallied in favor of their candidates, according to the election administrator's four-page written report. In a seven-page written order entered on September 23, 2004, the trial court confirmed the election results and stated that the church's new board of directors consisted of Loncie McCray, Clarence Brownlow, Chester Hudson and Eugene Price (all of whom served on the board prior to trial) and also James Ketchum (replacing Marsaw).

In addition, the trial court held that the July 2000 appointment of directors by Richards was "null and void" and that the directors chosen in 2003 by Marsaw also were not properly selected. The court noted that pursuant to the 1980 articles of incorporation, directors were to be elected by members of the church. The court awarded the newly elected board "all of the powers entrusted to it" by the church's articles of incorporation.

ANALYSIS

I. "Law of the Case" Doctrine

On appeal, defendants first contend that the trial court could not carry out this court's instructions on remand without delving into issues of religious doctrine. Defendants argue that by following the directions of this court, the trial court impermissibly intruded into matters of church governance in two ways: by determining the church's membership and by imposing a member-elected form of government.

Plaintiffs respond that this court's prior ruling that the parties' dispute could be resolved without considering ecclesiastical

issues represents the "law of the case." The "law of the case" doctrine provides that an issue of law that was decided on appeal is binding on the circuit court on remand and on the appellate court on subsequent appeal. *Lowe Excavating Co. v. International Union of Operating Engineers Local No. 150,* 358 Ill.App.3d 1034, 1040, 295 Ill.Dec. 344, 832 N.E.2d 495, 501 (2005). When the appellate court "announces a particular view of the law governing the case and reverses and remands the case for further proceedings in accordance with the views announced, if the case is again brought before such court for review the former decision is binding on the court making it, and the questions decided and determined by it on the first appeal are not open for reconsideration on the second appeal." *Zerulla v. Supreme Lodge Order of Mutual Protection,* 223 Ill. 518, 520, 79 N.E. 160 (1906); see also *Lowe Excavating,* 358 Ill.App.3d at 1040, 295 Ill.Dec. 344, 832 N.E.2d at 501.

This court previously considered the trial court's dismissal of the case at the pleadings stage. In *Brownlow v. Richards,* Nos. 1-01-3164, 1-02-1346, 335 Ill.App.3d 1180, 297 Ill.Dec. 201, 836 N.E.2d 932 cons. (2002) (unpublished order under Supreme Court Rule 23), we considered the appeal from the trial court's grant of defendants' motion to dismiss the complaint. The basis of the trial court's ruling was that its resolution of the complaint would involve an impermissible interference in religious affairs. This court remanded for the trial court to hear and consider evidence and "make findings of fact necessary to a neutral principles analysis." On remand, a different trial judge, based on the evidence presented, resolved the parties' dispute over church property and governance by considering the church's governing documents and ordering the election of a new board of directors.

We do not find the "law of the case" doctrine to bar our current consideration of the trial court's rulings because in the previous appeal of this case, we determined that the trial court needed to make factual findings. We now consider whether the trial court, upon remand, correctly applied the

law to its own findings of fact. As plaintiffs state, this court's task at this stage is not to revisit whether the case should have been remanded to the trial court but to determine if the trial court properly executed the mandate it received. See *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec. 867, 824 N.E.2d 1117, 1122-23 (2005).

II. The Trial Court's Application of Neutral Principles of Law

Turning to the underlying issues raised by defendants on appeal, we consider whether the evidence at trial indicates that the court resolved the parties' dispute based on neutral principles or whether the court's rulings constituted an impermissible intrusion into religious matters.

Defendants renew their contention that the trial court's determination of which group could control the church involved an improper consideration of its religious doctrine. They contend that the trial court violated the first amendment protections of church autonomy in two ways: (1) by selecting the membership of the church and requiring an election; and (2) by replacing the church's leadership with the newly elected board and changing the church governance from a hierarchical model overseen by the pastor to a member-elected form of government embodied by a board of directors.

In this appeal, our standard of review differs from the standard under which we reviewed the trial court's dismissal of plaintiffs' complaint under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2002)). In the previous appeal, this court considered *de novo* whether the trial court lacked jurisdiction to address the substance of the complaint. See *Borowiec v. Gateway 2000, Inc.*, 209 Ill.2d 376, 382, 283 Ill.Dec. 669, 808 N.E.2d 957, 962 (2004). Using that nondeferential standard, this court reversed the judgment of the trial court and ordered it to make factual findings, which the trial court has done and which form the basis of this appeal. The standard of review here is whether

the trial court's ruling is contrary to the manifest weight of the evidence. *City of Chicago v. Elevated Properties LLC*, 361 Ill.App.3d 824, 832, 298 Ill.Dec. 564, 840 N.E.2d 677, 684 (2005).

As has been noted throughout the consideration of this dispute by the trial court and this court, the civil courts of a state have the general authority to resolve property disputes in a religious setting. *Jones v. Wolf*, 443 U.S. 595, 602, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, 784 (1979). Courts can consider such matters on a limited basis provided that the court's actions do not represent State interference with the free exercise of religion or include the resolution of a dispute on the basis of a party's religious doctrine or practice. U.S. Const., amend. I; *Jones*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d at 784. The United States Supreme Court stated in *Jones* that the courts of a particular state are not bound to follow a particular method of resolving these types of controversies, though noting that courts are required to avoid entering into a consideration of doctrinal matters, " 'whether the ritual and liturgy of worship or the tenets of faith.' " *Jones*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d at 784, quoting *Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367, 368, 90 S.Ct. 499, 500, 24 L.Ed.2d 582, 584 (1970) (Brennan, J., concurring).

Following the analysis used in *Jones*, Illinois courts have adopted the "neutral principles of law" approach, in which a court may examine church charters, constitutions and bylaws, deeds, state statutes and other evidence to resolve the matter in the same way as it would a secular, or nonreligious, dispute. *Apostolic New Life Church of Elgin v. Dominquez*, 292 Ill.App.3d 879, 884, 227 Ill.Dec. 31, 686 N.E.2d 1187, 1191 (1997); *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill.App.3d 700, 714, 157 Ill.Dec. 214, 572 N.E.2d 283, 291 (1991).

In *Aglikin v. Kovacheff*, 163 Ill.App.3d 426, 432, 114 Ill.Dec. 549, 516 N.E.2d 704, 708 (1987), this court discussed the "neutral principles" analysis in greater detail:

"As a general rule, neutral principles may be applied to two types of church property disputes: ownership disputes and control disputes. In church ownership disputes, a court may decide whether property belongs to the local church or general church by reference to 'objective well-established concepts of trust and property law.' (*Jones v. Wolf* (1979), 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 62 [61] L.Ed.2d 775, 785). In control disputes, where the local congregation is itself divided into conflicting factions, the courts may determine which faction controls the property, without infringement upon first amendment rights, by consulting the 'well-established principles of statutory and common law traditionally applied to determine who has legal control over any particular corporation or voluntary association and how freely or extensively that control can be exercised.' " [Citations.]

A. *Church Membership*

Defendants further contend that a civil court cannot involve itself into the issue of membership in a religious organization. They argue that the trial court's decision regarding church membership necessarily involved inquiry into religious doctrine because the qualifications for membership are "purely religious."

Defendants argue that they submitted a list of members under protest, and they challenge the affidavits that each voter submitted attesting to his or her baptism, church contribution and/or attendance at church services. They assert that the affidavits represented a "rewriting" of the conditions of church membership because the court removed the religious component of membership.

Although defendants attempt to inject a religious standard on the requirements for membership, Marcenia Richards testified that to determine a person's church membership, she would review his or her church attendance and contributions.

The record reflects that plaintiffs and defendants submitted to the trial court a list of members who should be allowed to vote in the election. Individuals were allowed to vote even if they did not provide additional documentation of their membership in the church. The election administrator's report indicates that every person who attempted to cast a ballot was allowed to do so.

Based on those facts, the trial court's actions did not represent a judicial inquiry into religious doctrine. The court also did not impose its own membership requirements.

B. *Form of Church Governance*

Defendants also contend that the trial court impermissibly imposed a new form of governance on the church, favoring a "congregational" model in which a board of directors is elected by the church's membership to oversee the church's affairs, in contrast to the previous use of a "hierarchical" model under which the pastor appointed the directors.

This court has exercised jurisdiction to resolve disputes between competing factions of an organization in a religious setting. See *Ginossi v. Samatos*, 3 Ill.App.2d 514, 525-26, 123 N.E.2d 104, 109 (1954). Here, the parties and the pertinent cases often refer to a church's polity, which is its internal structure or form of church government. *Kelley v. Riverside Boulevard Independent Church of God*, 44 Ill.App.3d 673, 680, 3 Ill.Dec. 298, 358 N.E.2d 696, 701 (1976). This court discussed the difference between a hierarchical and a congregational form of church organization in *Aglikin*:

"When doctrinal or polity issues arise in the determination of a property dispute, the courts must defer to the resolution reached by the church's highest ecclesiastical authority. [Citation.] If the church is hierarchical,*i.e.*, the local church is a subordinate member of a general church organization, then a civil court's decision must defer to that of the general church. [Citation.] If the church is congregational, *i.e.*, the

local church is strictly independent of other ecclesiastical organizations, the civil court should defer to the decision of the local congregational governance. [Citations.]" *Aglikin*, 163 Ill.App.3d at 430-31, 114 Ill.Dec. 549, 516 N.E.2d at 707.

Defendants employ a different definition of "congregational" and "hierarchical" than those set out in *Aglikin*. Defendants describe a hierarchical system as that led by the pastor, and they assert that, here, the church's pastor "has asserted hierarchical control over all aspects of the religious institution," including the appointment of directors. They contend that the trial court replaced that hierarchical structure with a "congregational model," where the church's members elected a board of directors.

However, the United States Supreme Court has defined a "congregational" form of church government as one that is independent of other ecclesiastical associations. See *Hines v. Turley*, 246 Ill.App.3d 405, 419, 186 Ill.Dec. 194, 615 N.E.2d 1251, 1260 (1993), citing *Watson v. Jones*, 80 U.S. 679, 20 L.Ed. 666 (1872). If a church is congregational, the court must defer to the decision of the local church governance. *Aglikin*, 163 Ill.App.3d at 430-31, 114 Ill.Dec. 549, 516 N.E.2d at 707; see also *Hines*, 246 Ill.App.3d at 419, 186 Ill.Dec. 194, 615 N.E.2d at 1260.

The members of the Bethlehem Healing Temple Church organized a national group called the Living Witnesses of the Apostolic Faith (LWAF). However, the church's governing documents reflect a congregational organization rather than a hierarchical one. The trial court stated in its written order that "[t]he neutral evidence in this case does not indicate that the [church] is a hierarchy controlled by the leadership of the LWAF." [FN4] Moreover, the special provisions appended to the articles of incorporation state that church directors are elected by the members of the church to manage the church's business.

FN4. We previously noted that the pastor of a church affiliated with the LWAF is appointed by the presiding bishop and not by members of the church. *Brownlow v. Richards*, 328 Ill.App.3d 833, 835 n. 2, 263 Ill.Dec. 31, 767 N.E.2d 482, 484 (2002).

Defendants argue that the church has never practiced a member-elected form of government. Indeed, the trial testimony established that the procedures set out in the articles of incorporation and accompanying special provisions were largely dormant and had been used inconsistently and intermittently. Witnesses who were active in the church, including McCray, Brownlow, Gibson and Marsaw, testified that they did not know the church was organized as a corporation and that directors were to be elected by church members. Both Poole and Richards appointed individuals to the board of directors at different points. However, the record also indicates that Richards was elected in 1984 by the church's members to replace Poole.

Defendants point to that testimony, among other facts, to state that the articles were modified or abandoned by nonuse. The facts of this case are similar to those in *First Church of Deliverance v. Holcomb*, 150 Ill.App.3d 703, 104 Ill.Dec. 35, 502 N.E.2d 298 (1986). There, a dispute about the church's leadership arose at First Church of Deliverance, which was incorporated in 1977 as a not-for-profit corporation. *Holcomb*, 150 Ill.App.3d at 705, 104 Ill.Dec. 35, 502 N.E.2d at 299. At a meeting attended by a large number of church members, several members "expressed various concerns about the church's finances," and a resolution was made and approved to replace the current board of directors with new directors. *Holcomb*, 150 Ill.App.3d at 705, 104 Ill.Dec. 35, 502 N.E.2d at 299. The members of the new board sought a preliminary injunction against the previous directors seeking to prevent the displaced board from interfering with the operations of the church. *Holcomb*, 150 Ill.App.3d at 705-06, 104 Ill Dec. 35, 502 N.E.2d at 300.

Holding that the evidence supported the denial of the motion for a directed verdict in favor of the displaced board members, the trial court noted that the church's bylaws and election procedures had gone unused and that the church essentially had governed its meetings "by custom." *Holcomb*, 150 Ill.App.3d at 709-10, 104 Ill.Dec. 35, 502 N.E.2d at 302. While noting the testimony that the church's members did not vote on church matters, the court held that "[t]he fact that no prior elections of board members had taken place did not preclude the congregation from removing directors who had acted to its detriment." *Holcomb*, 150 Ill.App.3d at 710, 104 Ill.Dec. 35, 502 N.E.2d at 302.

Here, as in *Holcomb*, testimony was presented that the church's funds were being used improperly. The apparent dormancy of the articles and written procedures in the instant case do not negate their effectiveness. Moreover, the use of a majority rule system is supported by precedent in cases involving church governance of similarly organized congregations. *Dominquez*, 292 Ill.App.3d at 888, 227 Ill.Dec. 31, 686 N.E.2d at 1194, citing *Jones*, 443 U.S. at 607, 99 S.Ct. at 3027, 61 L.Ed.2d at 787; see also *Wright v. Smith*, 4 Ill.App.2d 470, 475, 124 N.E.2d 363, 365 (1955). The trial court's rulings were not contrary to the manifest weight of the evidence.

III. Defendant's Remaining Contentions

Defendants next assert that the trial court violated the Illinois Religious Freedom Restoration Act (775 ILCS 35/1 *et seq.* (West 2002)) (the Act), by taking control of the church away from Marcenia Richards and changing the church's form of governance. The Act provides that a government may not substantially burden a person's exercise of religion unless the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means" of doing so. 775 ILCS 35/15 (West 2002). Defendants attempt to apply this section of the Act to the trial court's ruling, arguing that the court restricted their exercise of religion.

While the parties' arguments on this point are not well developed due to plaintiffs' failure to respond to defendants' contentions on appeal as to this subject, the language of the Act does not support defendants' position. The Act states: "If a person's exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against a government." 775 ILCS 35/20 (West 2002).

Defendants contend that the trial court falls under the definition of "government" and that the court's order constitutes a governmental action that substantially burdened their ability to exercise their religion. Section 20 of the Religious Freedom Restoration Act allows a claim when a potential plaintiff's exercise of religion is impeded by a government action, and it states that claim or defense can be raised in a judicial proceeding. 775 ILCS 35/20 (West 2002). However, section 20 does not suggest that the result of a judicial proceeding can give rise to the claim itself. The cases that have been decided under the Act have involved government action in the form of zoning ordinances and tax exemptions, for example. See *Oak Grove Jubilee Center, Inc. v. City of Genoa*, 347 Ill.App.3d 973, 283 Ill.Dec. 610, 808 N.E.2d 576 (2004); *Calvary Baptist Church of Tilton v. Department of Revenue*, 349 Ill.App.3d 325, 285 Ill.Dec. 412, 812 N.E.2d 1 (2004); *County of Kankakee v. Anthony*, 304 Ill.App.3d 1040, 238 Ill.Dec. 140, 710 N.E.2d 1242 (1999). The Act expressly authorizes a judicial proceeding to resolve a claim; it is thus difficult to perceive how such a judicial proceeding itself would violate the Act. Defendant's argument is illogical. The Act has never been applied to challenge a court's ruling, and we decline to extend its applicability to these facts.

Next, defendants renew their contention that plaintiffs' claims are barred by the doctrine of *laches*, arguing that plaintiffs did not raise the issue of the absence of elections for many years and now are benefitting from that silence. *Laches* is an

equitable principle that bars relief to a party whose unreasonable delay in bringing an action for relief prejudices the rights of the other party. *Hayes v. State Teacher Certification Board*, 359 Ill.App.3d 1153, 1167, 296 Ill.Dec. 291, 835 N.E.2d 146, 159 (2005). As the party seeking to prove *laches*, defendants must show more than a mere passage of time; they must show an unreasonable delay in bringing the action that caused them material prejudice. See *Hayes*, 359 Ill.App.3d at 1167, 296 Ill.Dec. 291, 835 N.E.2d at 159.

Defendants contend that for the last 20 years, the church was largely run by its pastor, despite the special provisions to the articles of incorporation, and that plaintiffs did not act to protect their rights during that time despite their actual knowledge of the documents. The testimony on this point was mixed, with some witnesses who were active in the church stating that they did not know that the church's directors were to be elected. As we have noted, the written provisions were used sporadically and inconsistently, apparently to the benefit of whichever group controlled the church at that time.

Defendants correctly point out that although the *laches* argument was raised to the trial court, the court made no explicit ruling on that point. However, whether *laches* applies depends on the unique facts and circumstances of a particular case. *Hayes*, 359 Ill.App.3d at 1167, 296 Ill.Dec. 291, 835 N.E.2d at 159. The trial court's ruling that a new election of directors could be held effectively answers defendants' contentions that plaintiffs were not entitled to make use of the written provisions.

IV. Plaintiffs' Cross-Appeal

In a cross-appeal, plaintiffs (the Marsaw group) contend that the elected board should not displace the board that was selected in 2003. The 2003 board included Hudson, Brownlow, McCray and Price, along with Marsaw, who was

the only "holdover" member of the original board of directors. Plaintiffs argue that in the absence of a valid election of successor directors of the church, Marsaw continued to be the sole lawful director and maintained the power to appoint those directors in 2003.

Plaintiffs essentially ask this court to review the findings of fact and credibility determinations made by the trial court as to Marsaw and the 2003 board. We decline to disturb those rulings, which the court entered after hearing testimony at a two-week bench trial. See *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill.App.3d 806, 818, 301 Ill.Dec. 555, 847 N.E.2d 565, 575 (2006).

Lastly, in a request to cite supplemental authority, plaintiffs bring our attention to the recent decision of this court in *Muhammad v. Muhammad-Rahmah*, 363 Ill.App.3d 407, 300 Ill.Dec. 377, 844 N.E.2d 49 (2006) (modified on denial of rehearing), which they argue is distinguishable from the instant case. Defendants did not respond to plaintiffs' arguments regarding *Muhammad;* however, an extensive discussion of that case is not necessary, because we agree with plaintiffs that *Muhammad* is not analogous to the facts presented to the trial court here. The articles of incorporation of Bethlehem, the church in the instant case, specify that a director is to hold his or her office until a successor is elected. The church membership validly elected a new board of directors that did not include Marsaw, and, therefore, plaintiffs' claims that Marsaw continues as a holdover director are unavailing. We therefore deny the relief requested in plaintiffs' cross-appeal.

CONCLUSION

For all of the reasons stated herein, we affirm the judgment of the trial court in resolving the parties' dispute through an election. We also reject plaintiffs' arguments on cross-appeal asking this court to replace the elected board with the 2003 board appointed by Marsaw.

Affirmed.

SHEILA M. O'BRIEN, P.J., with TULLY, J., concur.

Supreme Court of Illinois

Roosevelt Marsaw

v.

Marcenia J. Richards

NO. 103948

MARCH TERM, 2007
March 28, 2007

Lower Court: 368 Ill.App.3d 418, 306 Ill.Dec. 395, 857 N.E.2d 794

Disposition: Denied.

Marsaw v. Richards ,223 Ill.2d 637, 865 N.E.2d 969 (Table "Supreme Court of Illinois Dispositions of Petitions for Leave to Appeal".), 310 Ill.Dec. 249 (Ill. 2007).

[Seal of the Supreme Court]

SUPREME COURT OF ILLINOIS
Supreme Court Building
Springfield 62701

May 4, 2007

Mr. Clarence L. Burch
Burch and Associates, Inc. 1430 North Western
Avenue 1st Floor
Chicago, IL 60622

In re: Roosevelt Marsaw et al., respondents,
v. Marcenia J. Richards et al., petitioners.
No. 103948

Today the following order was entered in the captioned case:

Motion by petitioner for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion **Denied**.

Order entered by the Court.

Very truly yours,
/s/ Juleann Hornyak
Clerk of the Supreme Court

cc: Mr. John W Mauck
Mr. David R. Geerdes

[Seal of the Supreme Court]

SUPREME COURT OF ILLINOIS
Supreme Court Building
Springfield 62701

May 22, 2007
Ms. Marcenia J. Richards
Bethlehem Healing Temple Church
12 S. Oakley Blvd.
Chicago, IL 60612

Today the following order was entered:

No. 103948- Roosevelt Marsaw et al., respondents,
v. Marcenia J. Richards et al., petitioners.

Emergency motion by petitioner for reconsideration of the order denying the motion for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion denied.

Order entered by the Court.

[No Signature]

cc: Mr. Clarence L. Burch
Mr. John W Mauck
Mr. David R. Geerdes

IN THE CIRCUIT COURT OF COOK COUNTY. ILLINOIS, COUNTY DEPARTMENT, CHANCERY DIVISION

[September 23, 2004]

ROOSEVELT MARSAW, et al.,

No. 01 CH 16442

Plaintiff,

Hon. Thomas P. Quinn

v.

MARCENIA J. RICHARDS, et al.,

Defendants.

ORDER

This matter comes before the court for trial to resolve who controls the Bethlehem Healing Temple Church Inc. ("BHTCI") after the appellate court remanded the combined cases of *Marsaw v, Richards* CH 16442, and *Brownlow Richards,* 01 CH 09038. This protracted struggle began when two factions of the congregation that worshiped at 12 South Oakley divided over financial issues and who should be pastor. The defendants currently control the church building and claim that Marcenia Richards is the pastor for the church. The faction represented by the plaintiffs alleges that they were forced out of the congregation when Marcenia Richards took control in 2001. Since then, they have met at other locations to worship, most recently at Suder School, but they continue to claim to be members of the original congregation. Before this conflict, Bethlehem was the founding church for the Living Witnesses of the Apostolic Faith ("LWAF') In 2001 Marcenia Richards purportedly dissolved any connection with LWAF.

Civil courts have general authority to resolve controversies involving control or ownership of property. *Jones v. Wolf*, 443 U.S. 595, 602 (1979). A state is free to adopt an approach for settling church disputes as long as that method does riot involve consideration of a church's doctrine. *Id.* Neutral principles can be applied to disagreements involving control of church property where a congregation is itself divided and the court must determine which faction controls the property. *Aglikin v. Kovacheff*, 163 Ill. App. 3d 426, 432, (1st Dist 1987). However, the civil courts may not determine a congregation's pastor because, "a congregation's determination as to who shall preach from the church pulpit is at the very heart of free exercise of religion." *Hines* v. *Tarley*, 246 Ill. App. 3d 405, 419-20 (2nd Dist 1993).

The appellate court directed this court to determine "whether plaintiffs or defendants should control Bethlehem." The appellate court stated that this should be done by considering the "articles of incorporation, original constitution, bylaws and 'special provisions', annual reports and minutes from annual meetings." The appellate court specifically directed that a determination be made as to whether the 2000 constitution passed by defendants superceded the original constitution. The appellate court was apparently mistaken as to the existence of an original constitution.

The late Bishop A. C. Richards stated succinctly in paragraph 8 of his June 26, 2001 affidavit that BHTCI "adopted a corporate form in order to conduct worldly business." The Articles of Incorporation provide for an annual meeting of the "members of the church" for the purpose of electing directors. The record date for determining 'who the members are that are entitled to vote at this meeting is the date on which the notice of meeting is mailed. The Articles require the corporate officer in charge of membership records to compile a complete list of the members entitled to vote but provides no guidance as what

constitutes a member. The board of directors manages the business affairs of the church and may dispose of any church property.

Plaintiff's Amended Complaint filed on June 10, 2003, alleges three counts. Count I primarily seeks a determination that the plaintiffs are the true directors for BHTCI. In the prayer for relief plaintiffs also seek to have BHTCI property in defendants' control delivered to them and to have defendants account for all other BHTCI property (see par. 60(b), (c)). These requests should have been contained in separate counts for replevin and accounting, respectively *(see* 735 ILCS 5/2-603(b)). Count II is pled in the alternative and seeks to compel an election for the board of directors. Count III is brought on behalf of LWAF and seeks an accounting from defendants for its property.

BHTCI was first incorporated in 1980 under the direction of then pastor Charles Poole. The Articles named five directors, stated a twenty-one part purpose, and included "special provisions" for the members of the church to elect a board of directors. The board of directors has complete control over the BHTCI property and assets.

Defendants take the position that they are the legally constituted board of BHTCI because they were appointed as such by the late Bishop Richards on July 11, 2000. Defendants admit that they were not elected to the board by the members of the congregation. There is no authority that enables the pastor of BHTCI to unilaterally appoint directors. Additionally, it would be fundamentally unfair under the facts of this case to validate the actions of Bishop Richards in this regard. He ascended to the position of pastor only by defeating Bishop Poole's widow in an election by the members of the church. Had Bishop Poole engaged in nepotism and appointed a family member as his successor, Bishop Richards would never have become pastor. This court agrees with plaintiffs that the July 11th appointment of directors by Bishop

Richards was null and void. Consequently, the subsequent actions taken by this board of directors are also void.

Plaintiffs argue that the legally constituted board of directors was appointed by the only surviving member of the original board of directors, Roosevelt Marsaw, on February 13, 2003. There are several problems with this assertion. First of all, Marsaw cannot be considered to still be a director since he moved to Mississippi seventeen years ago. Under the Articles, a director must be a member in "good standing". By his own admission Marsaw devotes the majority of his time energy, and money to the church that he heads in Mississippi. None of the original directors resided outside of the Chicago metropolitan area. Also, this court finds it difficult to believe that Marsaw oversees a church in Mississippi and has time to travel 750 miles on a biweekly basis to attend services here. Despite its ready availability, no documentary evidence of this extraordinary feat was introduced. Second, the Articles provide that vacancies to the board are filled by election of the members at the annual meeting and by appointment from the remaining director(s). Third, even if these directors were properly appointed by Marsaw, the subsequent election for directors conducted on July 8, 2003, was improper because defendants' faction was not notified Fourth, even if defendants' faction had been notified, it would be unfair to require them to attend this election when their own board of directors had been left intact by the appellate court opinion. Finally, defendants' defense of laches was adequately proven. It is more probably true than not true that Marsaw read the Articles when he signed them. He knew that he was a director in 1980 and he slept on his rights for over twenty years.

The neutral evidence in this case does not indicate that the BHTCI is a hierarchy controlled by the leadership of the LWAF. If a church is hierarchical, then the civil court must defer to the determination of the church hierarchy. *Aglikin*, 163 Ill. App. 3d at 430. Majority rule is

generally employed in governance of religious societies, unless the church's corporate charter or constitution provides for a hierarchical affiliation, *Jones*, 433 U. S. at 607. The Articles do not indicate that any other organization has an interest in controlling BHTCI's property. Furthermore, BHTCI pre-dates LWAF's incorporation, and no evidence suggests that control of the property or assets of BHTC was ceded to LWAF after the latter was incorporated in 1984 Therefore, LWAF does not control the property and assets of BHTCI.

Accordingly, the court finds that neither of the boards was properly constituted. The 1980 Articles of Incorporation are the only valid document that determines control of BHTCI and the purported 2000 constitution is void. This ruling disposes of the declaratory judgment aspects of Count I. This court, *sure sponte*, strikes paragraphs 60(b) and (c) of Count I and grants plaintiffs leave to replead these counts within 21 days.

As reflected in other orders of this court, an election for the board of directors was conduct on September 21, 2004, in courtroom 2410 of the Daley Center. Court rulings concerning this election are contained in these other orders, the report of proceedings, and the report of the Election Administrator which is attached hereto. It would unnecessarily lengthen this order if this painstaking and expensive process were summarized herein. The results of this election verified what plaintiffs have steadfastly represented to the court - that defendants are leaders of a church without a congregation. Not a single vote was cast for the slated directors nominated by the defendants. Defendants are shepherds, so to speak, without a flock. Despite any representations to the contrary, the inescapable conclusion from this agonizing three years of litigation is that plaintiffs represent the true congregation of BHTCI.

Accordingly, the election results are confirmed by this

court and the board of directors of BHTCI consists of Loncie McCray, Clarence Brownlow, James Ketchum, Chester Hudson, and Eugene Price (hereinafter referred to as "the Board"). This court had previously ordered the parties to submit proposed orders that assumed that their side won the election. As further acknowledgement of their groundless claim to control of the church, defendants did not submit a proposed order. Plaintiffs did submit a proposed order that goes far beyond the relief that can be granted at this time. A previous appellate court opinion in this case reversed a predecessor trial judge when he ordered relief beyond matters that were properly before him. This court is prepared to hold that the Board can exercise all of the powers entrusted to it by the Articles. This includes the ability to control the property of the corporation. This, in turn, means that the Board can dictate who can present on church property and can manage the property (such as changing locks) in any manner that it sees fit.

Involvement of this court in dictating further powers of the Board (proposed order at paragraph c) or in managing the church (proposed order at paragraph d) would be inadvisable for several reasons. First, as mentioned previously, the appellate court has already held that the trial court should restrict remedies to matters specifically before it. Second, the Board has not even acted yet. As improbable as it may seem, it could decide that defendants should retain control of church assets. Third, court involvement should be as limited as possible given the need to separate the church and state. (see First Amendment to the U.S. Constitution.) Fourth, further court ordered remedies in this cast would be cumbersome to enforce. For example, assume at the Board decides that defendants should no longer have access to the church facility. Since the Board essentially has the same powers as any owner of property, it would have the authority to bar defendants from the premises. Assume that a Property owner came home to find a stranger his house. One of his options would be to call the police. Another option could be to file a mandatory injunction in the chancery division, serve the stranger with a summons

and complaint, notice up a hearing date, obtain an order directing the stranger to vacate the property, notice up a rule to cause why the stranger should not be held in contempt for ignoring the order, serve stranger with this order, appear in court on the rule, obtain a body to attachment order, return court after the sheriff arrests the stranger on the body attachment, and, more than likely, have a hearing on the rule at this time. Obviously, the more efficient option is to phone the police.

This is not to say that defendants are "strangers" or trespassers. The above discussion simply demonstrates that it would be inappropriate for the court to take any further action - at least, at this time.

Accordingly, this court declares that plaintiffs' board of directors referred to in the Amended Complaint and the board of directors for the defendants were both improperly constituted. The Board elected on September 21, 2004, is declared to be the proper board of directors This ruling disposes of Count II and of that portion of Count I that seeks a declaratory judgment. Since this court has stricken the remaining portions of Count I, it is appropriate to make this order final. There exists no just cause to delay enforcement or appeal of this order pursuant to SCR 3040. A more succinct recitation of certain holdings in this order is also entered this date in the event that plaintiffs need to present something more cogent to third parties.

Judge Thomas P. Quinn
September 23, 2004
Circuit Court-238.

/s/Thomas P. Quinn
Judge Thomas P. Quinn

IN THE CIRCUIT COURT OF COOK COUNTY. ILLINOIS, COUNTY DEPARTMENT, CHANCERY DIVISION

[September 23, 2004]

ROOSEVELT MARSAW, et al.,

No. 01 CH 16442

Plaintiff,

Hon. Thomas P. Quinn

v.

MARCENIA J. RICHARDS, et al.,

Defendants.

ORDER

This matter was tried before this court pursuant to a directive from the appellate court to determine control of the Bethlehem Healing Temple Church located at 12 S. Oakley, Chicago, IL. After extensive court proceedings that culminated in an election held in this court on September 21, 2004, this court finds as follows:

The legitimate Board of Directors of the Bethlehem Healing Temple Church is LONCIE MCCRAY, CLARENCE BROWNLOW, JAMES KETCHUM, CHESTER HUDSON and EUGENE PRICE. A majority of this Board (3) controls the business and the property of the Bethlehem Healing Temple Church. This authority includes, but is not limited to the following:

1) to determine who may excluded from any of the church property at 12 S. Oakley, 2236 W. Monroe St., 2204 W. Washington Street and 114 N. Leavitt St.,

2) to change or cause the locks to be changed at the

aforementioned properties,

3) to sell, lease, exchange, mortgage, pledge, and/or dispose of the aforementioned property or of any other assets of the church.

This order does not apply to any portion of the aforementioned property that is used exclusively as a residence. This order is effective immediately.

Judge Thomas P. Quinn
September 23, 2004
Circuit Court-238.

/s/Thomas P. Quinn
Judge Thomas P. Quinn

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State of Illinois

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Clerk of the Court
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August 27, 2007

Pastor Larry Martin
410 East Bowen
Chicago, IL 60653

In re: Larry Martin, petitioner, v. Salvadore Godinez etc, et al., respondents. Habeas Corpus
No. 105116

Today the following order was entered in the captioned case:

Motion by petitioner for leave to file a petition for writ of
habeas corpus. Motion Denied.

Order entered by the Court.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

cc: Mr. William T. Barker
Hon. Kathleen M. Pantle
Mr. John Ouska

No. 07-704

FILED
DEC 21 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

PASTOR LARRY MARTIN,

Petitioner,

v.

SALVADOR GODINEZ, as Executive Director of the Cook County Department of Corrections, THOMAS DART, as Cook County Sheriff, and JUDGE KATHLEEN M. PANTLE, Judge of the Circuit Court of Cook County,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
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QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to review a denial of a motion for leave to file a motion for *habeas corpus* when the petitioner has subsequently been released from jail and purged of contempt and fines.

2. Whether this Court has jurisdiction to review a state supreme court's order denying a motion for leave to seek an original writ of *habeas corpus* when the record does not indicate any federal question was presented or decided, the movant chose not to take an appeal of right, and state law provides that an original writ is discretionary extraordinary relief.

3. Whether *habeas corpus* with respect to a contempt sanction may be used to make a collateral attack on the underlying judgment when direct appeals from the underlying judgment have been exhausted and an attempted petition for certiorari regarding that judgment was untimely.

4. Whether a civil court may incarcerate a nonparty for civil contempt of court when the nonparty was acting in active concert with parties to the action and had actual notice of the order.

LIST OF PARTIES TO THE PROCEEDING BELOW

Pursuant to U.S. Supreme Court Rule 12.6, Plaintiffs in *Marsaw, et al. v. Richards, et al.*, No. 01 CH 16442 (Cir. Ct. Cook County) (the "Marsaw Group") are also parties in this underlying matter. In addition to the parties listed in the caption, the Marsaw Group was the prevailing party in the action which gave rise to the contempt order challenged in the *Martin v. Godinez, et al.*, No. 105116 (Ill. 2007). Illinois Supreme Court Rule 381(c) allows the prevailing party in such an underlying action to file appropriate papers, and the Marsaw Group did file an opposition to the motion for leave to seek an original writ of *habeas corpus*.

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Stavros v. Karkomi, 349 N.E.2d 599 (Ill. App. Ct. 1976) 20

Stotler & Co. v. Able, 870 F.2d 1158 (7th Cir. 1989) 20

United States v. Watson Chapel School District No. 24, 446 F.2d 933 (8th Cir.), *cert. denied*, 404 U.S. 1059 (1971) 14

CONSTITUTIONAL PROVISIONS

Ill. Const. Art. §§ 4(a) and 16 16

STATUTES

735 ILCS 5/11-101 19

Ill. Sup. Ct., R. 381 16

Fed. R. Civ. P. 65(d) 20

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner Larry Martin was found in civil contempt of court in *Marsaw v. Richards*, No. 01 CH 16442 (Cir. Ct. Cook County) ("*Marsaw*"), for acting in concert with the refusal of defendants ("the Richards Group") to turn over all property of the Bethlehem Healing Temple Church to plaintiffs ("the Marsaw Group").[1] When he refused to purge himself of contempt, Martin was committed to the Cook County Jail.[2] Martin chose not to appeal the orders of the circuit court and instead filed a motion with the Illinois Supreme Court for leave to seek an original writ of *habeas corpus*, a motion the Supreme Court denied on August 27, 2007.[3] Thereafter, Martin was released from jail, the Richards Group was evicted from the Church's real property, Martin was purged of his contempt, and the daily fines previously assessed were discharged.[4] Neither the finding of contempt nor Martin's incarceration has any continuing collateral consequences.

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[1] Turnover Order, a copy of which is included in Respondents' Appendix ("RA") 1a; Contempt Order, RA 4a; Amended Contempt Order, RA 6a.

[2] RA 16a, 18a.

[3] Petitioner's Appendix ("PA") 32a.

[4] Release Order, RA 22a; Eviction Receipts, RA 24a-30a; Purging Order, RA 32a.

The underlying judgment in *Marsaw* was affirmed by the Illinois Appellate Court[5] and the Illinois Supreme Court denied review on March 28, 2007;[6] the time for filing a petition for certiorari in this Court expired on June 26, 2007. The Turnover Order required delivery of the Church property on June 29, 2007.[7] Martin was held in contempt on July 19, 2007[8] and committed to jail on July 25, 2007.[9] On August 2, 2007, the Richards Group attempted to file a petition for certiorari in this Court, which the Clerk rejected as untimely. The Richards Group moved for an order directing the Clerk to accept the petition or for leave to file the petition out of time. This Court denied that motion. *Richards v. Marsaw*, No 07M10 (Oct. 1, 2007).

Martin was released from jail on September 12, 2007, based on his agreement to assist the Marsaw Group in obtaining possession of Church property.[10] On September 14, 2007, his assistance became unnecessary, when the Cook County Sheriff evicted the Richards Group from the Church's real property.[11] On September 27, 2007, the circuit court entered an

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[5] PA 1a-19a.

[6] PA 20a.

[7] RA 1a.

[8] RA 5a, 7a.

[9] RA 16a.

[10] RA 22a.

[11] RA 24a-30a.

order vacating all fines against Martin and purging him of his contempt.[12]

A. The Proceedings Below.

As the opinion of the appellate court reflects, *Marsaw* was a contest for corporate control of Bethlehem Healing Temple Church and, thereby, of the properties it owns.[13] From August, 2001 until they were evicted by the Cook County Sheriff on September 14, 2007, the Richards Group had physical control of all church properties.[14] The appellate court has described the "arduous and contorted path" of this litigation as "[r]eminiscent of the Israelites flight from Egypt."[15] Extensive proceedings, including two appeals and a trial, resulted in an opinion and judgment on September 23, 2004, that (1) the Richards Group had never been lawful officers or directors of Bethlehem and (2) candidates supported by the Marsaw Group had won a court-ordered election and were entitled to control Bethlehem's properties.[16] As noted above, that judgment was affirmed.

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[12] RA 32a.

[13] PA 1a.

[14] PA 2a.

[15] PA 1a.

[16] PA 23a.

B. The Turnover Order and the Refusal to Comply.

On June 12, 2007, the circuit court entered a Turnover Order that ordered Defendants to "deliver all personal and real property owned by Bethlehem to the control of the lawful board of directors" including "12 South Oakley, deeds and keys to properties" at noon on June 29, 2007.[17]

Having appeared at various proceedings to contest the Turnover Order, respondents to the *Marsaw* contempt proceedings (including Martin) were well aware of the order. Martin was also personally served with a copy of the Turnover Order.

Martin claims under and through the *Marsaw* Defendants and is legally identified with them. Martin's trial testimony established that he and Defendant Marcenia Richards "work[ed] together" and "share[d] the responsibility of ministering." After this litigation began, he became a purported member of the board and purported co-pastor of Bethlehem, along with Defendant Marcenia Richards. The two of them shared responsibilities which, by Martin's own testimony, included having "absolute authority to make decisions regarding the business, the spiritual life, the gathering of the congregation, and the interaction with the community."

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[17] RA 1a-3a.

In a June 14, 2007, article in the Chicago Defender, Martin was featured prominently as the pastor of Bethlehem Healing Temple and through the use of "we" and "us," identified himself as subject to the June 12, 2007 Turnover Order. Martin was quoted in the Chicago Defender article as saying, "Per the court order, at 12 p.m. on June 29, we are to turn everything over to them and after that I can't come back in there. I'm not walking out." He went on to say, "[j]ust because the court said to do this, we're not. They may have to bring the sheriff out to remove us."

At noon on June 29, 2007, the court-declared board and counsel went to receive control of Church Property, including the church at 12 South Oakley. Entry to 12 South Oakley was barred by Martin and some of the defendants. William Barker, counsel for the Marsaw Group, told Martin that they were there to receive possession in accordance with the Turnover Order. Martin responded that the Richards Group would not give possession. Mr. Barker asked Martin whether he was familiar with the Turnover Order, and handed him a copy. Martin responded that he was familiar with the Turnover Order and that it would effectively evict the Richards Group from the Church, He read the order and reiterated that they would not comply. Marcenia Richards concurred. Martin acted in active concert with defendants in refusing to comply with the June 12, 2007 Turnover Order, actually taking the lead in asserting that refusal.

C. The Contempt Proceedings.

On June 29, 2007, the Marsaw Group filed a Verified Petition for Rule to Show Cause in the circuit court, asking that court to issue a rule to show cause why Defendants and Martin should not be held in contempt for refusing to comply with the June 12, 2007 Turnover Order. On July 5, 2007, the circuit court entered a Rule to Show Cause ordering Martin and each other Respondent to "appear personally before the Court [on July 19, 2007] and show cause why he should not be held in civil contempt for the violations of [the June 12, 2007 Turnover Order] and committed to County Jail until he complies."[18] Martin was personally served with a copy of this executed Rule to Show Cause on July 13, 2007.

On July 19, 2007, Martin appeared before the circuit court for an evidentiary hearing to determine whether he and the other contempt respondents were in contempt for not complying with the Turnover Order. At all times during the contempt proceedings and the hearings that followed, Martin was represented in the circuit court by counsel. After all evidence and arguments were heard and after Martin had been given a chance to fully present his case, the circuit court entered an order (a) finding Martin, his co-pastor Marcenia Richards, and Marie Oliver in indirect civil contempt and (b) imposing a daily fine

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[18] RA 35a.

until they complied with the Turnover Order.[19] A status was set for July 23, 2007 to determine whether the contemnors had yet complied. On July 23, 2007, Martin and Oliver again appeared before the circuit court. At the July 23, 2007 hearing, Richards did not appear and a body attachment was issued for her. She has not yet been apprehended. Oliver purged herself of contempt by testifying that she could not compel compliance with the Turnover Order. Martin, however, was unsuccessful at purging himself of contempt and was ordered to appear again on July 25, 2007 to determine whether he had yet complied.

On July 25, 2007, the circuit court found that Martin had not yet complied with the Turnover Order and committed him to the custody of the Cook County Sheriff until such time as he complied with the Turnover Order.[20] A status hearing was held July 26, 2007 to see if Martin had yet complied. At that time, counsel for Martin argued that Martin did not have the power to comply with the Turnover Order and requested a hearing. A status hearing was set for July 27, 2007 to establish whether Martin had the power to comply and whether he had yet complied.

On July 26, counsel for Martin filed a motion to discharge Martin. Allegedly, Martin was improperly held in contempt or had purged the contempt because (1) Martin was not a party to the *Marsaw* case and

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[19] RA 5a, 7a.

[20] RA 16a, 20a.

was not ordered to do anything and (2) Martin had no ability to comply.

When asked what efforts he had made to comply with the Turnover Order or to persuade others to do so, Martin testified that he met with Marcenia and suggested compliance, but she objected. No one else was consulted. He testified that only the board could authorize compliance but admitted that no meeting had been called. He admittedly had the keys after June 12, but left them in his office when he no longer wanted the responsibility for them. He admitted that he drives a Mercedes furnished to him as pastor. He admitted that a title admitted in evidence appeared to be the title to that car. That title showed Richards and Bethlehem Healing Temple Church as co-owners. Martin admittedly had the keys until shortly before he was incarcerated. He admittedly never offered to turn them over.

On redirect, Martin testified to not having known that the church was a co-owner of the Mercedes. After evading questions about whether he would then turn it over, if ordered to do so, he finally said "I suppose so."

The Marsaw Group called Loncie McCray who testified that, on the evening of June 19, she had seen Martin unlock the church at about 10:00 p.m.

The circuit court ruled that Martin had not purged his contempt. He still had the ability to comply, and even if he had relinquished that power when he left the keys, a voluntary relinquishment of the

power to comply would not discharge the obligation to do so. The court specifically commented that, even when his own lawyer asked Martin to agree to turn over the car, it was like pulling teeth to get an equivocally affirmative answer.

D. Background of the Dispute.

This litigation began as a suit against the late Bishop Arcenia C. Richards, then pastor of Bethlehem, and others (including his daughter, Marcenia Richards) whom he purported to have appointed as directors of Bethlehem. Plaintiffs sought, *inter alia,* an election of directors in accordance with Bethlehem's Articles and a declaration that certain "bylaws" purportedly adopted by the Richards Group were void.

The Richards Group initially persuaded the circuit court to dismiss for want of jurisdiction.[21] The Appellate Court disagreed, and remanded for factual findings of fact and to apply "'neutral principles'" analysis to determine which group should control Bethlehem.[22]

The Marsaw Group relied on Bethlehem's Articles, which the Appellate Court's unreported prior

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[21] PA 2a.

[22] PA 2a.

opinion sometimes referred to as the "original constitution."[23] The Articles provide that the directors are to be elected by the "members of the church."[24] The Richards Group relied on a set of purported bylaws, which the Appellate Court's unreported prior opinion sometimes referred to as the "2000 constitution." The Appellate Court mandated that the circuit court "determine whether the original constitution remains in effect or if the 2000 constitution was validly passed and supersedes the original constitution."[25] After a two-week bench trial, the circuit court determined, in rulings that were not appealed, that Bishop Richards' appointment of the "board" that purportedly adopted the "bylaws" was unauthorized and its actions void:

> There is no authority that enables the pastor . . . to unilaterally appoint directors. . . . This Court agrees with plaintiffs that the July 11th appointment of directors by Bishop Richards was null and void. Consequently, the subsequent actions of that board are also null and void.[26]
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> . . . . The 1980 Articles of Incorporation are the only valid document that determines

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[23] RA 49a.

[24] RA 39a; Articles of Incorporation, Pls.' Ex. 1, at 10.

[25] RA 49a.

[26] PA 25a.

control of Bethlehem and the purported 2000 constitution is void.[27]

The circuit court then rejected claims that certain members of the Marsaw Group were the lawful directors.[28] In the absence of any current lawful directors, the court ordered an election.[29] Plaintiffs' candidates were declared to be the lawful board, entitled to possess Bethlehem's properties.[30]

As the opinion of the Appellate Court reflects, the Bethlehem congregation was founded in 1932 by the late Bishop Charles E. Poole and his wife Evangelist Mattie B. Poole as a church in the Pentecostal/Apostolic tradition.[31] Bethlehem quickly acquired a following of hundreds of people, and, in 1961, acquired its current home at 12 South Oakley Boulevard.[32]

Bishop Poole and other church leaders incorporated Bethlehem on June 20, 1980, as the "Bethlehem Healing Temple Church," under the General Not-for-profit Corporation Act.[33] The Articles named an initial board of directors, and provided that "the business of

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[27] PA 27a.

[28] PA 27a.

[29] PA 27a.

[30] PA 29a.

[31] Church History in Bishop Poole's Funeral Program, Jan. 21, 1984, Pls.' Ex. 65 at 2.

[32] *Id.* at 2-3.

[33] Articles 1-3.

the church (corporation) shall be managed by its board of directors."[34] "An annual meeting of the members of the church shall be held on the second Tuesday in July of each year for the purpose of electing directors."[35] Special meetings "of the members of the church" for the purpose of filling vacancies in the board could be called by the board or by not less than one-fifth of all the members.[36] The board may designate the place for any annual or special meeting. The board could fix a record date to determine the "members of the church" entitled to vote.[37] Membership rosters were required to be maintained by "[t]he officer having charge of the membership records of the corporation (church)" and made available for inspection.[38] "In all elections for directors, every member shall have the right to vote" using cumulative voting.[39]

The evidence is undisputed that, prior to 2001 no one in the congregation (other than the incorporators, Bishop Richards, and the few close associates Bishop Richards told) knew the corporation existed, there were no meetings of the members of the church to

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[34] Articles 2, 10.

[35] Articles 8.

[36] Articles 8.

[37] Articles 8.

[38] Articles 9.

[39] Articles 10.

elect directors, and the board of directors never functioned.[40]

In 1984, Bethlehem's founder and pastor, Bishop Poole, died.[41] The congregation organized an election, constructing an agreed roster of members entitled to vote.[42] Bishop Richards was elected to become the new pastor.[43] As the circuit court noted, "[h]ad Bishop Poole engaged in nepotism and appointed a family member as his successor, Bishop Richards would never have become pastor."[44] Rather, Bishop Richards became pastor by the authority of a congregational vote.

In 2001, a dispute arose over church finances, and, in May, 2001, the congregation voted 192-20 to remove Bishop Richards as pastor.[45] He refused to step down, and this litigation ensued. Before his death in August, 2001, Bishop Richards purported to appoint his daughter Marcenia to succeed him as pastor.[46]

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[40] PA 4a.

[41] PA 3a.

[42] PA 3a; Report of Proceedings ("RP") Vol. 17 at 47:4-22; Pls.' Ex. 24.

[43] PA 3a.

[44] PA 25a.

[45] PA 3a.

[46] PA 3a.

REASONS FOR DENYING THE WRIT

I. THERE IS NO JURISDICTION TO REVIEW THIS MATTER, WHICH IS MOOT AND NOT CAPABLE OF REPETITION, AS PETITIONER HAS BEEN RELEASED FROM JAIL AND PURGED OF CONTEMPT AND FINES.

"[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy."[47] Moot cases do not satisfy the case or controversy requirement because a judicial decision can no longer grant any favorable relief.[48] A criminal case is moot upon the convict's release unless collateral consequences will be imposed on the basis of the conviction.[49] This principle holds even stronger for civil contempt once the contempt has been purged.[50] "Unlike a criminal

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[47] *L.A. v. Lyons*, 461 U.S. 95, 101 (1983).

[48] *Iron Arrow Honor Soc. v. Heckler*, 464 U.S. 67, 70 (1983).

[49] *Sibron v. New York*, 392 U.S. 40, 57 (1968).

[50] *In re Campbell*, 628 F.2d 1260, 1261 (9th Cir. 1980) ("A long line of precedent holds that once a civil contempt order is purged, no live case or controversy remains for adjudication.") (*citing Marshall v. Whittaker Corp.*, 610 F.2d 1141 (3d Cir. 1979); *Securities and Exchange Commission v. Sloan*, 535 F.2d 679 (2d Cir. 1976); *cert. denied*, 430 U.S. 966 (1977); *Matter of Berry*, 521 F.2d 179 (10th Cir.), *cert. denied*, 423 U.S. 928 (1975); *United States v. Watson Chapel School District No. 24*, 446 F.2d 933 (8th Cir.), *cert. denied*, 404 U.S. 1059 (1971); *Federal Trade Commission v. Stroiman*, 428 F.2d 808 (8th Cir. 1970); *Murrell v. United*

(Continued on following page)

conviction or involuntary commitment to a mental hospital, an adjudication of civil contempt carries with it no possibility of collateral deprivations of civil rights or other specifically legal consequences."[51]

Though he was incarcerated for civil contempt, Martin has been released from custody, has fully complied with the circuit court's order, and has had all fines vacated and contempt purged. The contempt order is moot as to Martin.

II. THERE IS NO JURISDICTION TO REVIEW THE ILLINOIS SUPREME COURT'S ORDER BECAUSE (1) NO FEDERAL CLAIM WAS PRESENTED BELOW AND (2) THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THAT ORDER.

It is well established that this Court does not have jurisdiction to review state court orders "if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision."[52] Moreover, in order for this Court to have jurisdiction, the record must affirmatively show not only that a federal question was presented, but that the state court's decision of the federal question "was necessary to the

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States, 253 F.2d 267 (5th Cir. 1958); *Securities and Exchange Commission v. Laird*, 598 F.2d 1162 (9th Cir. 1979)).

[51] *Marshall*, 610 F.2d at 1145.

[52] *Harris v. Reed*, 489 U.S. 255, 260 (1989).

determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it."[53] "[I]f it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction."[54]

The decision that is the subject of the instant petition is that of the Illinois Supreme Court denying a motion brought by Martin pursuant to Sections 4(a) and 16 of Article VI of the Illinois Constitution and under Illinois Supreme Court Rule 381. Martin pled solely pursuant to Illinois law and did not plead pursuant to any federal statute or federal constitutional right. Martin's failure to assert any federal claim means that none was adjudicated below, unless the Illinois Supreme Court raised and decided such an issue sua sponte.

Illinois state law does provide for original actions relating to *habeas corpus*, but Rule 381 merely allows for a motion requesting leave to file, giving the Illinois Supreme Court discretion whether to allow the filing of a complaint.[55] An original action for *habeas corpus* is not only discretionary, it is also an "extraordinary

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[53] *Lynch v. New York*, 293 U.S. 52, 55 (1934) (citations omitted).

[54] *Id.* (citations omitted).

[55] Ill. Sup. Ct., R. 381.

remedy" which "may not be used to perform the functions of an appeal."[56]

In the instant case, Martin chose not to take an appeal of right in the appellate court, but instead filed a discretionary extraordinary writ in the Illinois Supreme Court. As such, state law provided the Illinois Supreme Court with adequate and independent state-law grounds to exercise its discretion and deny Martin's motion.

The decision of the Illinois Supreme Court is silent as to the grounds on which it based its decision, and nothing in the record affirmatively shows that the Illinois Supreme Court relied on federal law in denying Martin's motion for leave to seek an original writ of *habeas corpus* pursuant to Illinois law. Absent an affirmative showing that this decision was based on federal law, the Court should not take jurisdiction, given the state grounds that are adequate and independent.

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[56] *People ex rel. Kazubowski v. Ray*, 272 N.E.2d 225, 227 (Ill. 1971).

III. DIRECT APPEALS FROM THE UNDERLYING JUDGMENT HAVE BEEN EXHAUSTED AND AN ATTEMPTED PETITION FOR CERTIORARI WAS UNTIMELY; PETITIONER MAY NOT USE THE INSTANT ACTION TO COLLATERALLY ATTACK THE UNDERLYING JUDGMENT.

Even if ultimately ruled incorrect, court orders must be obeyed until overruled on appeal.[57] "[A] contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy."[58] In his petition, Martin tries to raise issues regarding the action underlying the Turnover Order, but raising this in a review of the Illinois Supreme Court *habeas corpus* order is a collateral attack and should be barred.

The underlying decision in *Marsaw* has been completely litigated and should not be relitigated in these proceedings. The opportunities to appeal the judgment have been exhausted. The Richards Group appealed to the Illinois Appellate Court and lost. It filed a petition for leave to appeal in the Illinois Supreme Court and was denied. Rather than file a timely petition in this Court, it sought leave to file a motion of reconsideration in the Illinois Supreme Court twice and was denied both times. When the

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[57] *Maness v. Meyers*, 419 U.S. 449, 458 (1975).

[58] *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948).

Richards Group did attempt to file a petition for writ of certiorari in this Court, it was properly denied as untimely.

All direct appeals from the *Marsaw* judgment have been exhausted, making that judgment final. Martin may not attack that judgment in the instant petition.

IV. THE CIRCUIT COURT HAD PROPER PERSONAL AND SUBJECT MATTER JURISDICTION TO ENTER AN ORDER OF CONTEMPT AGAINST PETITIONER, WHO WAS ACTING IN ACTIVE CONCERT WITH PARTIES TO VIOLATE THE COURT'S ORDER.

The Illinois Code of Civil Procedure establishes that "[e]very order granting an injunction . . . is binding . . . upon the parties to the action . . . and upon those *persons in active concert or participation* with them *who receive actual notice of the order* by personal service or otherwise."[59] This proposition also applies to affirmative injunctions such as the one at issue in the underlying case.[60]

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[59] 735 ILCS 5/11-101 (emphasis added).

[60] *People ex rel. Scott v. Master Barbers & Beauty Culturists Ass'n*, 293 N.E.2d 393, 396-97 (Ill. App. Ct. 1973) (holding that a nonparty not served with process could still be in contempt for not complying with an injunction because he had met with the enjoined party and took actions that aligned with the enjoined

(Continued on following page)

While Martin was not a party to the *Marsaw* action, he was very closely affiliated with the Richards Group prior to and at the time he was held in contempt. On June 29, 2007, Martin took the lead in refusing to obey the Turnover Order. Martin's actions in concert with the Richards Group and his knowledge of the Turnover Order subjected him to the jurisdiction of the circuit court for purposes of entering a contempt order.

There can be no serious claim that Illinois law authorizing contempt proceedings against nonparties is unconstitutional. Rule 65(d) of the Federal Rules of Civil Procedure likewise allows a court to hold "a nonparty in contempt if that person has 'actual knowledge' of the court order and 'either abets the [party named in the court order] or is legally identified with him.' "[61]

Martin had actual knowledge of the Turnover Order. He was quoted in the June 14, 2007 issue of the Chicago Defender acknowledging the existence of the order and stating the intent to defy it. He was present in court on June 19, 2007, accompanying Marcenia Richards when she presented a motion to vacate the Turnover Order. On June 29, 2007, he acknowledged familiarity with the order, and a copy of the order was exhibited to him. Nonetheless, he

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party's interests); *see also Stavros v. Karkomi*, 349 N.E.2d 599, 606 (Ill. App. Ct. 1976).

[61] *Stotler & Co. v. Able*, 870 F.2d 1158, 1164 (7th Cir. 1989).

repeatedly refused to comply. Accordingly, the circuit court had jurisdiction to hold him in civil contempt for refusing to comply with the Turnover Order.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, CHESTER HUDSON, CLARENCE BROWNLOW, LONCIE McCRAY, and EUGENE PRICE, Directors of Bethlehem Healing Temple Church, Inc.; GEORGE GIBSON, Member of Bethlehem Healing Temple Church; LIVING WITNESSES OF THE APOSTOLIC FAITH, INC.; and CLORD JORDAN, Presiding Bishop of the Living Witnesses of the Apostolic Faith, and Administrator of Bethlehem Healing Temple Church,	Case No. 01 CH 16442
Plaintiffs,	**Judge Kathleen M. Pantle**
v.	
MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS, JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC.,	
Defendants.	

Turnover Order

This Court having previously entered an Order recognizing the legitimate Board of Directors elected on September 21, 2004 and an Order of Possession on October 1, 2001, the Board of Directors having decided that Defendant-Appellants should not retain control of church assets,

The Illinois Supreme Court having (1) entered a stay of the proceedings in this Court pending the outcome of Defendants petition for leave to appeal, (2) denied Defendants petition for leave to appeal, (3) denied Defendants subsequent motions for reconsideration, and (4) issued the Mandate to the Appellate Court,

The Appellate Court having issued the mandate to this Court,

IT IS HEREBY ORDERED THAT:

a) At noon on June 29, 2007, or at such earlier time as the parties may agree, at 12 South Oakley or at such other place as the parties may agree, Defendants shall deliver all personal and real property owned by Bethlehem to the control of the lawful board of directors including such individuals as the lawful board of directors, or a majority of its members, directs to manage or control the property. Defendants shall vacate all Bethlehem property except that which they occupy exclusively as a residence. Defendants shall take all steps necessary to facilitate the transfer of all Bethlehem property including all real and personal property including 2204 West

Washington, 114 North Leavitt, 2236 West Monroe, 12 South Oakley, deeds and keys to properties, buildings, equipment, records, vehicles, vehicle keys and titles, post office box keys, safe deposit box keys, computers, bank accounts, insurance policies, utility accounts, and any assets or accounts of any kind owned by Bethlehem.

b) Defendants shall cooperate fully with the transition of power that is hereby ordered.

c) Plaintiffs' request for an award of costs is deferred for separate consideration.

Issues regarding Plaintiffs' demand for an accounting remain to be decided. But this Court found that there was no just reason to delay enforcement or appeal of its September 23, 2004 Order, which this Order enforces, pending resolution of that issue. Accordingly, this Order is enforceable immediately.

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Date: June 12, 2007

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT -
CHANCERY DIVISION

ROOSEVELT MARSAW, et al.,	)	
Plaintiffs,	)	
Vs.	)	**No. 01 CH 16442**
MARCENIA RICHARDS, et al.,	)	
Defendants.	)	

ORDER OF INDIRECT CIVIL CONTEMPT

This matter comes to be heard on Plaintiffs' Petition for a Rule to Show Cause; Defendants Marcenia Richards, Larry Martin, and Marie Oliver having been properly served and appearing in open court; the Court having subject matter jurisdiction; IT IS HEREBY FOUND AND ORDERED:

This Court entered a lawful Order on June 12, 2007 ("turnover Order") commanding defendants to turn over property belonging to Bethlehem Healing Temple Church ("Bethlehem") to plaintiffs by noon on June 29, 2007.

Each defendant has been properly served with the turnover Order of June 12, 2007. Defendants and each of them have violated this Order by failing to turn over the property belonging to Bethlehem as set forth in the Order.

Defendants and each of them have been given a reasonable opportunity to comply with this Order, including, but not limited to an encounter between plaintiffs and plaintiffs' counsel on June 29, 2007, shortly after 12:00 p.m.

Defendants' refusal to comply is willful and contumacious.

Accordingly, an adjudication of civil contempt is hereby entered, and sanctions are imposed as follows:

Each defendant shall be fined $200.00 per day every day until the court Order of June 12, 2007 is complied with. The fine shall be paid to the Clerk of the Circuit Court of Cook County. Any monies belonging to Bethlehem shall NOT be used for this purpose. Only personal monies belonging defendants shall be used.

Defendants may purge themselves of this contempt by delivering to plaintiffs or plaintiffs' counsel, the law firm of Sonnenschein Nath & Rosenthal, L.L.C., the property of Bethlehem.

This matter is set for further status on July 23, 2007 at 1:30 p.m. at which time this Court will consider further sanctions should the Order not be complied with by that date and time.

DATE: July 19, 2007

Kathleen M. Pantle
Kathleen M. Pantle

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, et al., Plaintiffs,	)	
v.	)	**No. 01 CH 16442** **Judge** **Kathleen M. Pantle**
MARCENIA J. RICHARDS, et al., Defendants.	)	

AMENDED ORDER OF INDIRECT CIVIL CONTEMPT

On July 19, 2007, this Court entered an Order of Indirect Civil Contempt, based upon oral findings and oral statements of the conduct required to purge the contempt, all which were transcribed by a court reporter; this Amended Order is entered nunc pro tunc to memorialize those oral findings and oral statements.

This matter comes to be heard on Plaintiffs' Petition for a Rule to Show Cause; Defendants Marcenia Richards, Larry Martin, and Marie Oliver having been properly served and appearing in open court; the Court having subject matter jurisdiction; IT IS HEREBY FOUND AND ORDERED:

The oral findings of this Court, attached hereto, made at the close of the July 19, 2007 hearing on a

rule to show cause, are hereby incorporated into this Order.

This Court entered a lawful Order on June 12, 2007 ("Turnover Order") commanding defendants to turn over property belonging to Bethlehem Healing Temple Church ("Bethlehem") to plaintiffs by noon on June 29, 2007.

Each defendant has been properly served with the Turnover Order of June 12, 2007. Respondents and each of them have violated this Order by failing to turn over the property belonging to Bethlehem as set forth in the Order.

Respondents and each of them have been given a reasonable opportunity to comply with this Order, including, but not limited to an encounter with plaintiffs and plaintiffs' counsel on June 29, 2007, shortly after 12:00 p.m.

Respondents' refusal to comply is willful and contumacious.

Accordingly, an adjudication of civil contempt is hereby entered, and sanctions are imposed as follows:

Each defendant shall be fined $200.00 per day every day until the court Order of June 12, 2007 is complied with. The fine shall be paid to the Clerk of the Circuit Court of Cook County. Any monies belonging to Bethlehem shall NOT be used for this purpose. Only personal monies belonging to Respondents shall be used.

Respondents may purge themselves of this contempt by delivering all corporate property to plaintiffs, plaintiffs' counsel, the law firm of Sonnenschein Nath & Rosenthal, LLP, or one of the lawful directors of Bethlehem, Loncie McCray, Clarence Brownlow, James Ketchum, Chester Hudson, or Eugene Price, the property of Bethlehem.

Date: September 6, 2007

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Attorneys for Plaintiffs
William T. Barker
Terrance A. Norton
David R. Geerdes
Sonnenschein Nath
& Rosenthal LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

ROOSEVELT MARSAW, CHESTER HUDSON, CLARENCE BROWNLOW, LONCIE McCRAY, and EUGENE PRICE, Directors of Bethlehem Healing Temple Church, Inc.; GEORGE GIBSON, Member of Bethlehem Healing Temple Church; LIVING WITNESSES OF THE APOSTOLIC FAITH, INC.; and CLORD JORDAN, Presiding Bishop of the Living Witnesses of the Apostolic Faith, and Administrator of Bethlehem Healing Temple Church,	No. 01 CH 16442
Plaintiffs,	
vs.	
MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC.,	
Defendants.	

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause before the Honorable KATHLEEN M. PANTLE, Judge of said Court, in Room 2410, Richard J. Daley Center, Chicago, Illinois, on the 19th day of July, 2007, at the hour of 1:30 o'clock p.m.

PRESENT:

SONNENSCHEIN NATH & ROSENTHAL LLP
BY: MR. ANTHONY T. ELISEUSON
MR. DAVID R. GEERDES
8000 Sears Tower
Chicago, Illinois 60606

Appeared on behalf of the Plaintiffs;

RICHARDSON & MACKOFF
BY: MR. TRAVIS RICHARDSON
400 South Dearborn Street
Chicago, Illinois 60605

Appeared on behalf of the Defendants.

REPORTED BY:
KIMBERLY WINKLER CHRISTOPHER, CSR, RPR
CERTIFICATE NO. 084-00275

[117] Thank you, your Honor.

THE COURT: Okay. Having heard all the evidence, the arguments of both sides, my findings are as follows: That this matter has come to be heard on plaintiffs' verified petition for a rule to show cause. Marie Oliver, Marcenia Richards, and Larry Martin having been properly served with the petition and

appearing here in open court. The court does have subject matter jurisdiction over these proceedings.

This court entered a lawful order dated June 12th, 2007, ordering the defendants to turn over property belonging to Bethlehem Healing Temple Church by noon on June 12th – I'm sorry – June 29th, 2007. Each defendant has been properly served with a copy of this court order.

I believe the court order is clear, though there may be some – the court order is clear. It asks for deeds and keys to the property. There's no dispute about what is meant by that. Buildings, records, vehicles, vehicle keys and titles, post office box keys, safety-deposit box keys, computers, bank accounts, insurance policies, utility accounts.

[118] The defense argues that equipment may be construed to be vague, assets and accounts of any kind may be construed to be vague. The problem I'm having here is that, first of all, I don't think that in and of themselves are vague; but in any event, nothing has been turned over. If it was just a failure to turn over equipment and any assets and accounts, you know, that would be one thing. But it's not. It's a flat-out refusal to turn anything over. And the court order has spelled out with specificity what exactly the plaintiffs are looking for and what they're entitled to.

But this court order is based on previous rulings by Thomas Quinn of the Circuit Court of Cook County, which ruling was affirmed by the appellate court. PLA was denied by the Illinois Supreme Court.

The defendants Oliver, Richards, and Martin have violated this court order by failing to turn over the property belonging to Bethlehem; that they were given reasonable opportunities to turn over the properties, specifically on June 29th, 2007.

After 12:00 p.m. when plaintiffs – that [119] being the board of directors, which was lawfully elected – and plaintiffs' counsel William Barker appeared and asked for the property, the defendants without any justification contumaciously and willfully refused to turn over the property to the lawful board of directors, that being the plaintiffs.

Lela Walker is not going to be included in this contempt order because I don't have any evidence that she's been served, and it's my understanding she's an elderly woman with some health problems here. And also Pastor Hudson testified that he wasn't sure that she was there. So just to be clear, this order refers to defendants Oliver, Richards, and Martin.

But the defendants have had the opportunity to comply; that they have refused to comply; that there have been several court dates. They have had all this time. It's now July 19th. They could comply at any time merely by turning the property over to the lawful board of directors.

There is an adjudication of civil contempt; that the defendants Oliver, Richards, [120] and Martin are found in contempt; that they have refused – willfully refused to obey the lawful order of the court. This is beyond the point of negotiation.

Judge Quinn's order was entered in 2004. I understand that there was an appeal. I don't have a problem with the order being stayed pending the appeal. Obviously that was lawful. But the mandate has issued some time ago. The order was entered some time ago. This is beyond the point of negotiation.

So at this point sanctions are as follows: Each defendant will pay a 200-dollar per day fine for every day that they refuse to turn the property over, the payments to be made to the Clerk of the Circuit Court of Cook County.

The funds are not to be taken from church funds. If funds are taken from any monies belonging to the church, that being Bethlehem Healing Temple Church, this court will contact the Cook County State's Attorney office to initiate criminal contempt proceedings and possibly theft proceedings. That would be the recommendation of the court.

[121] So now obviously the Cook County State's Attorney's office – the State's Attorney being the elected prosecutor, it's up to them whether or not to file the charges. But in any event, the court will contact the State's Attorney's office and recommend that they initiate criminal contempt proceedings at the very least against the defendants if any monies from the church are used.

Defendants may purge themselves of this fine by turning over the property to any one of the members of the board of directors or to plaintiffs' counsel, any – if

they want to drop the keys off at the offices of Sonnenschein Nath & Rosenthal, that's fine with me. They don't even have to turn them over to Mr. Barker. They can turn them over to any attorney at Sonnenschein.

We are going to give this a status date of Monday, July 23rd. If defendants have not purged themselves of the contempt on that date, then I will take up the issue of other sanctions. And other sanctions can include time at the Cook County Jail; that being that the defendants at that point could be ordered to the custody of the Cook County Sheriff until they purge themselves.

[122] So from today until Monday it's a 200-dollar a day per fine, fine per day until they purge themselves. If they haven't purged themselves by Monday morning at 9:30, then at that point the court will consider other sanctions, including time at the Cook County Jail.

The defendants are not to leave the courtroom. The sheriff is directed to keep them there until they are – do you have a draft order or do you think we need to type one up?

MR. ELISEUSON: I think we'll need to type one up.

THE COURT: Okay. I'll go – you don't have a draft order?

MR. GEERDES: Not for fines.

MR. ELISEUSON: We can probably –

THE COURT: Can I see your order because we can amend the order you have.

MR. RICHARDSON: I'd like to see it, too, before that happens.

Your Honor, for the record, I understand the per diem is not each individual but –

THE COURT: Yes. It's $200 a day per defendant.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MARSAW, ET AL. Plaintiffs

v.

RICHARDS, ET AL., Defendants.

No. 01 CH 16442

ORDER OF COMMITMENT*

After a hearing on a rule to show cause,*

It is found that respondent Larry Martin **is guilty of willful contempt for** refusing to comply with this Court's Turnover Order dated June 12, 2007.

It is ordered that the sheriff take and keep custody of Larry Martin until such time as he chooses to comply with this Court's Turnover Order dated June 12, 2007 **or until released by process of law.** [The Sheriff is directed to bring Larry Martin back to the Court at 3:00 on June 26, 2007.] ~~The commitment shall not [illegible].~~

July 25, 2007

Kathleen M. Pantle 1775
Judge **Judge's No.**

Atty. No.: 90784
Name: David R. Geerdes
Atty. for: Plaintiffs
Address: 233 S. Wacker Dr., Ste. 7800

* Delete if inapplicable.

City/State/Zip: Chicago, IL 60606
Telephone: (312) 876-8000

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, et al.,	) **No. 01 CH 16442**
	) **Judge**
Plaintiffs,	) **Kathleen M. Pantle**
	)
v.	)
MARCENIA J. RICHARDS, et al.,	)
	)
Defendants.	)

AMENDED ORDER OF COMMITMENT

After a hearing on a rule to show cause held on July 19, 2007, IT IS HEREBY FOUND AND ORDERED:

On July 19, 2007, this Court found Respondent Larry Martin in indirect civil contempt based upon transcribed oral findings, which are memorialized in an Amended Order of Indirect Civil Contempt, dated September 6, 2007, the contents of which are incorporated in this order by reference.

On July 25, 2007, at a hearing where Martin was represented by attorneys Travis Richardson and Clarence Burch, this Court found that Martin had not purged himself of contempt and was then unwilling to deliver possession to the lawful board of Bethlehem Healing Temple Church (Bethlehem) or to assist the lawful board in obtaining possession. Accordingly, this Court entered an order committing Martin to the

custody of the sheriff until such time as he chooses to comply with the June 12, 2007 Turnover Order.

On July 27, 2007, Martin, again represented by Messrs. Richardson and Burch, appeared before this Court for a hearing, seeking to purge himself of contempt. At that time, this Court found that Martin had acted in concert with the defendants in refusing to comply with the June 12, 2007 Turnover Order. This Court found that Martin has been co-pastor at Bethlehem for four years. Martin conversed with the lawful board of directors of Bethlehem and plaintiffs' counsel on June 29, 2007 around noon, the time by which defendants were ordered to turn over Bethlehem property to the lawful board. At that time, Martin refused to turn over any Bethlehem property.

Martin testified that he did not, at that time or since, have possession of the keys to any of Bethlehem's properties. But he admitted that this was because, after entry of the Turnover Order, he had voluntarily left those keys in his office in the Church at 12 South Oakley, obtaining entry thereafter by having a custodian open the property. Martin had previously refused to tell this Court the name of the custodian or to direct the custodian to allow the lawful board of directors to enter and take possession. Moreover, Martin admitted that he had had possession of a car owned 50% by Bethlehem, which he claimed not to have known was corporate property. When asked by his own lawyer whether he would now turn over the car, if ordered to do so, the most

affirmative response Martin could manage was "I suppose so."

Martin has not shown that he made reasonably diligent efforts to comply with this Court's Turnover Order or that he is now willing to do so. Martin had the power to comply with the Turnover Order, but had repeatedly refused to do so and continued to refuse. He still has the ability to comply, and even if he had relinquished that power when he left the keys, a voluntary relinquishment of the power to comply would not discharge the obligation to do so.

Respondent Larry Martin is guilty of willful contempt for refusing to comply with this Court's Turnover Order dated June 12, 2007. It is ordered that the sheriff keep custody of Larry Martin until such time as he chooses to purge himself of contempt by delivering to plaintiffs, plaintiffs' counsel, the law firm of Sonnenschein Nath & Rosenthal, LLP, or one of the lawful directors of Bethlehem, Loncie McCray, Clarence Brownlow, James Ketchum, Chester Hudson, or Eugene Price, the property belonging to Bethlehem Healing Temple Church ("Bethlehem") identified in this Court's June 12, 2007 Turnover Order or until released by process of law.

Date: September 6, 2007

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Attorneys for Plaintiffs
William T. Barker
Terrance A. Norton

David R. Geerdes
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Marsaw, et al Plaintiffs **v.** Richards, et al Defendants	**No.** 01 CH 16442

ORDER

This matter having come before this Court on status and the Court being fully advised on the premises IT IS HEREBY ORDERED:

~~The sheriff is to release Larry Martin from custody on September 12, 2007.~~

Judge Pantle orders the release of Larry Martin from the custody of the Cook County Sheriff's Department from 26th and California *and* the Daley Center immediately today on September 12, 2007.

ENTERED:

Dated: SEP 12, 2007

Kathleen M. Pantle 1775
Judge **Judge's No.**

Atty. No.: 90784
Name: David Geerdes
Atty. for: Plaintiffs
Address: 7800 Sears Tower

City/State/Zip: Chicago, IL 60606
Telephone: 312-876-8000

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
12 S Oakly Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to Roosevelt Marsaw,
(Printed Name of Plaintiff/
Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the discretion of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118272 Case Number: 01CH16442

Possession tendered to: /s/	X David R. Geerdes Signature of Plaintiff/Agent for Plaintiff		9/14 Date
By Deputy Sheriff: /s/	[Illegible] Signature of Deputy Sheriff	5125 Star Number	9/14 Date

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
2236 W Monroe Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to Roosevelt Marsaw,
(Printed Name of Plaintiff/ Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the direction of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118306 Case Number: 01CH16442

Possession tendered to: /s/ X David R. Geerdes 9-14
Signature of Plaintiff/Agent for Plaintiff — Date

By Deputy Sheriff: /s/ [Illegible] 4965 9-14
Signature of Deputy Sheriff — Star Number — Date

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
2204 W Washington Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to X Chester Hudson,
(Printed Name of Plaintiff/ Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the direction of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118271 Case Number: 01CH16442

Possession tendered to: /s/ Chester Hudson 9-14-07
Signature of Plaintiff/Agent for Plaintiff — Date

By Deputy Sheriff: /s/ [Illegible] 5125 9-14-07
Signature of Deputy Sheriff — Star Number — Date

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
114 N Leavitt Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to X Chester Hudson,
(Printed Name of Plaintiff/ Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the direction of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118270 Case Number: 01CH16442

Possession tendered to: /s/ X Chester Hudson 9/14/07
Signature of Plaintiff/Agent for Plaintiff — Date

By Deputy Sheriff: /s/ [Illegible] 5125 9/14/07
Signature of Deputy Sheriff — Star Number — Date

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Marsaw, et al Plaintiffs	
v.	**No.** 01 CH 16442
Richards, et al Defendants	

ORDER

This matter coming to be heard on status, the Court being fully advised, IT IS HEREBY ORDERED:

All fines assessed against Defendant Oliver and Respondent Martin are vacated.

This matter is set for further status on Tuesday, October 16, 2007 at 10:00 a.m. in Room 2410 without further notice.

ENTERED:

Dated: SEP 27, 2007

Kathleen M. Pantle 1775
Judge **Judge's No.**

Atty. No.: 38643
Name: Travis Richardson
Atty. for: Def.
Address: 407 S. Dearborn Ste 1310

City/State/Zip: Chicago, IL 60605
Telephone: 312 296 9706/312 922 5206

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, CHESTER HUDSON, CLARENCE BROWNLOW, LONCIE McCRAY, and EUGENE PRICE, Director of Bethlehem Healing Temple Church, Inc.; GEORGE GIBSON, Member of Bethlehem Healing Temple Church; LIVING WITNESSES OF THE APOSTOLIC FAITH, INC.; and CLORD JORDAN, Presiding Bishop of the Living Witnesses of the Apostolic Faith, and Administrator of Bethlehem Healing Temple Church,	)	Case No. 01CH 16442
Plaintiffs,	)	**Judge Kathleen M. Pantle**
v.	)	
MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS, JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC.,	)	
Defendants.	)	

Rule to Show Cause

This matter coming before the Court on the attached Plaintiffs' Verified Petition For Rule To Show Cause Why Defendants Should Not Be Held In Contempt and the attached supporting declaration,

Defendants and each of them except Michael Morris are ordered to appear personally before the Court on July 19, at 1:30 _.m., in Room 2410 Daley Center, and show cause why each of them should not be held in civil contempt for the violations of this Court's order alleged in the Petition and committed to County Jail until they comply. Larry Martin is ordered to appear personally before the Court at that same time and place and show cause why he should not be held in civil contempt for the violations of this Court's order alleged in the Petition and committed to County Jail until he complies.

Plaintiffs shall personally serve each Defendant, except Michael Morris, and Larry Martin with this order and provide proof of service to this Court.

FAILURE TO APPEAR AS ORDERED BY THE COURT MAY RESULT IN A FINDING OF CONTEMPT AND A COURT ORDER FOR YOUR ARREST BY THE SHERIFF.

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Date: July 5, 2007

CERTIFICATE OF ATTORNEY

I certify that I am an attorney of record in the above cause and that the foregoing is a true and correct copy of the Order entered by the Court on the above date.

/s/ David R. Geerdes
Attorney

William T. Barker
Terrance A. Norton
David R. Geerdes
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000
Firm No. 90784

SIXTH DIVISION
November 22, 2002

No. 1-01-3164, 1-02-1346 (consolidated)

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEACON CLARENCE BROWNLOW, DISTRICT ELDER CHESTER HUDSON, ELDER EUGENE PRICE and SISTER LONCIE MCCRAY, Plaintiffs-Appellants, v. BISHOP A.C. RICHARDS, MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS and A.C. RICHARDS, JR. Defendants-Appellees.	Appeal from the Circuit Court of Cook County No. 01 CH 09038 Honorable John K. Madden, Judge Presiding

ROOSEVELT MARSAW, GEORGE GIBSON, LIVING WITNESSES OF THE APOSTOLIC FAITH, INC., and CLORD JORDAN, Plaintiffs-Appellants, v. MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS, JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC., Defendants-Appellees.	Appeal from the Circuit Court of Cook County No. 01 CH 16442 Honorable Thomas P. Quinn, Judge Presiding

ORDER

The parties to this consolidated appeal are engaged in a bitter and prolonged battle over control of the Bethlehem Healing Temple Church in Chicago. For the reasons set forth below, we reverse and remand these two cases to the trial court.

This court recently issued an opinion in a related case in which we partially describe the basis for this appeal. *Brownlow v. Richards*, 328 Ill. App. 3d 833 (2002). However, in the interests of completeness and proper context, we begin our statement of the facts anew. Bethlehem Healing Temple Church, Inc., (Bethlehem) was incorporated in 1980 under the Illinois General Not For Profit Corporation Act (the

Act) (now 805 ILCS 105/101.01 *et seq.* (West 1987)). According to the original articles of incorporation, Bethlehem's incorporators and first board of directors included Charles Poole, who founded the Bethlehem Church in 1932, and Roosevelt Marsaw, among others. The articles, along with several pages of accompanying "special provisions," state that church directors were to be appointed annually at a meeting of church members held for that purpose on the second Tuesday in July.[1] Bethlehem's annual reports for 1981 to 1983 list Charles Poole as president and pastor. Annual reports filed from 1984 through 2001 list Bishop A.C. Richards as pastor.[2]

The cases in this consolidated appeal both arise from allegations that Richards altered the organization of Bethlehem's governance to transform the church into a "family business" and to ensure that his daughter, Marcenia Richards, would succeed him as pastor without interference.

---

[1] The special provisions refer to church members as members of the "corporation."

[2] Bethlehem's members also organized a national group called the Living Witnesses of the Apostolic Faith, Inc., (LWAF), a governing body for member churches. Filed in 1984, the LWAF articles of incorporation list Richards and Brownlow as two of the seven original directors. Richards was LWAF's presiding bishop until shortly before his death in August 2001, when Clord Jordan succeeded him.

The *Brownlow* litigation (Case No. 1-01-3164)

In June 2001, plaintiffs Clarence Brownlow, a deacon of Bethlehem, Chester Hudson, a district elder, Eugene Price, a church elder, and Loncie McCray, a minister of the church, (to whom we refer collectively as the *Brownlow* plaintiffs) filed an amended complaint against defendants Richards, Marcenia Richards and others. The complaint referred to the July 11, 2000, meeting of defendants during which defendants adopted a new constitution and bylaws (the 2000 constitution) giving Richards the power to appoint members of Bethlehem's board of directors and stating, *inter alia*, that regular meetings of the board "may be held without notice" at a time and place of Richards' determination. The *Brownlow* plaintiffs contended they did not receive notice of the July 2000 meeting and that, in conflict with Bethlehem's original constitution, the 2000 constitution vested in the newly formed board of directors the voting rights that were formerly held by church members.

Citing section 103.10(1) of the Act, the *Brownlow* plaintiffs asked the trial court to declare the 2000 constitution invalid as inconsistent with the special provisions. Plaintiffs requested a meeting in July 2001 for the election of directors and asked the trial court to order an accounting of church funds received and spent in the past 10 years and also asked the court to enjoin defendants from spending church funds.

According to the record, the amended complaint followed an April 2001 order of the trial court requiring Richards to call a general meeting for the adoption of bylaws and the election of officers and a new pastor before May 11, 2001. Also in April 2001, Richards filed an annual report that listed him as Bethlehem's president and listed the other defendants in this action as Bethlehem's secretary, treasurer and directors. The *Brownlow* plaintiffs later filed an amended annual report listing them as the board of directors and asking the state to "disregard any other filings."

In June 2001, Brownlow and other church members sought a temporary injunction barring A.C. Richards from disrupting religious services at Bethlehem and compelling the turnover of Bethlehem's bank records and an accounting of "all funds contributed by the membership and other sources to Bethlehem Healing Temple." After Richards' death in August 2001, Marcenia Richards succeeded her father as pastor under the 2000 constitution.

Defendants moved to dismiss the *Brownlow* plaintiffs' amended complaint pursuant to sections 2-619(a)(1) and (a)(9) of the Code or Civil Procedure (735 ILCS 5/2-619(a)(1), (a)(9) (West 2000)), arguing that the trial court lacked jurisdiction to resolve a religious dispute and that defendants were the rightful officers and board of "said corporation." The trial court granted defendants' motion to dismiss with prejudice, stating that the government should not interfere with religious affairs.

On appeal to this court, the *Brownlow* plaintiffs contend that this case involves the application of neutral principles of law, not a determination of religious doctrine. They ask this court to remand the case to the trial court for further proceedings.

The *Marsaw* litigation (Case No. 1-02-1346)

After the trial court dismissed the *Brownlow* litigation, several church members who were not involved in those proceedings brought an action against Bethlehem and the defendants in *Brownlow* requesting an election of a new board of directors under the procedure described in Bethlehem's original articles of incorporation. The plaintiffs included Marsaw, who was one of Bethlehem's original directors, Jordan, the LWAF presiding bishop, George Gibson, a member of Bethlehem, and LWAF (referred to herein as the *Marsaw* plaintiffs). This case was heard in the trial court by a different judge than the judge who ruled on the *Brownlow* litigation.

In the trial court, the *Marsaw* plaintiffs contended that Marsaw continued to be a director of Bethlehem because no valid election had been held since the original board of directors was chosen in 1980. Defendants moved to dismiss plaintiffs' complaint pursuant to sections 2-619(a)(3) and (a)(4), which allow dismissal if an action is already pending between "the same parties for the same cause" or is "barred by a previous judgment." In a four-page written order, the trial court stated that defendants

were correct that the *Brownlow* and *Marsaw* cases sought the same relief of stopping defendants from controlling Bethlehem. The court granted defendants' motion to dismiss the complaint and stayed its ruling pending the appeal of the *Brownlow* litigation, noting if that case was reversed and remanded, the *Marsaw* plaintiffs could join in the *Brownlow* action on remand. Alternatively, the court stated, if the dismissal of the Brownlow action is affirmed on appeal, the *Marsaw* litigation also should be dismissed.

On appeal, the *Marsaw* plaintiffs contend that the resolution of *Brownlow* would not bar their claim under *res judicata* or collateral estoppel and that their litigation is warranted by material changes in circumstances since this court decided *Brownlow*. They ask that this court reverse the stay of their case and remand for further proceedings or vacate the stay and remand the case for reconsideration under the proper *res judicata* analysis.

Analysis

We have consolidated the *Brownlow* and *Marsaw* appeals. Both actions were dismissed pursuant to section 2-619, and our review of such dismissals is *de nova*. *Benedict v. Federal Kemper Life Assurance Co.*, 325 Ill. App. 3d 820, 823, 759 N.E.2d 23, 26 (2001). A motion to dismiss under section 2-619 admits the legal sufficiency of the complaint and raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by

external submissions which act to defeat the claim. *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 789, 758 N.E.2d 382, 389 (2001). This court must construe the allegations in the light most favorable to the plaintiffs and determine whether they have alleged sufficient facts to establish a cause of action and whether a genuine issue of material fact exists to preclude dismissal. *Benedict*, 325 Ill. App. 3d at 823, 759 N.E.2d at 26.

This court must determine whether it can consider the issues raised in both appeals. Although the First Amendment to the United States Constitution prevents civil courts from resolving church property disputes by examining matters of religious doctrine and practice, states have a legitimate interest in providing a forum for the peaceful resolution of internal church disputes, and civil courts have general authority to resolve controversies involving control or ownership of church property. *Jones v. Wolf*, 443 U.S. 595, 602, 61 L. Ed. 2d 775, 784, 99 S. Ct. 3020, 3025 (1979). A civil court may only determine, a church's polity if that determination can be made easily and without intrusive scrutiny. *Werling v. Grace Evangelical Lutheran Church of River Forest*, 139 Ill. App. 3d 496, 499, 487 N.E.2d 990, 992 (1985). A state is free to adopt an approach for settling church property disputes as long as that method does not involve consideration of a church's doctrine. *Jones*, 443 U.S. at 602, 61 L. Ed. 2d at 784, 99 S. Ct. at 3025.

In *Jones*, the Supreme Court expressly adopted the "neutral principles of law" approach, which allows a court to determine property ownership by applying general principles of property law and examining the local church charters and constitution, in addition to state statutes governing the holding of church property. *Jones*, 443 U.S. at 604, 61 L. Ed. 2d at 785, 99 S. Ct. at 3026. The court noted that the neutral principles method "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Jones*, 443 U.S. at 603, 61 L. Ed. 2d at 785, 99 S. Ct. at 3025. "If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Jones*, 443 U.S. at 604, 61 L. Ed. 2d at 785, 99 S. Ct. at 3026.

Since *Jones*, several Illinois courts have employed the neutral principles analysis with differing outcomes. See *Abrams v. Watchtower Bible and Tract Society of New York, Inc.*, 306. Ill. App. 3d 1006, 1011, 715 N.E.2d 798, 802 (1999) (complaint involved ecclesiastical principles and doctrines, thus precluding court's analysis); *People ex rel. Muhammad v. Muhammad-Rahmah*, 289 Ill. App. 3d 740, 744, 682 N.E.2d 336, 339 (1997) (in case involving *quo warranto* claim, appellate court held that trial court was not asked to interpret religious doctrine or rule on ecclesiastical question; appellate court remanded for trial court to utilize neutral principles approach in

interpreting corporate documents and applicable statutes); *Aglikin v. Kovacheff*, 163 Ill. App. 3d 426, 433, 516 N.E.2d 704, 709 (1987) (remanding to trial court for "findings of fact relevant to a 'neutral principles' analysis"); *Grace Evangelical Lutheran Church of River Forest v. Lutheran Church Missouri Synod*, 118 Ill. App. 3d 151, 156, 454 N.E.2d 1038, 1042 (1983) (court could not consider whether option contract may be exercised, since option provision was subject to whether certain religious precepts were taught).

The neutral principles theory can be applied to disagreements involving ownership of church property and those relating to control of the property. *Aglikin*, 163 Ill. App. 3d at 432, 516 N.E.2d at 708. Where a split exists among members of the local congregation, the court may objectively analyze the applicable statutes, common law, pertinent church charters, constitutions, bylaws and other evidence that would be relevant in a secular dispute to determine who has legal control over the corporation or voluntary association. *Jones*, 443 U.S. at 604, 61 L. Ed. 2d at 785, 99 S. Ct. at 3026. See also *Muhammad*, 289 Ill. App. 3d at 744, 682 N.E.2d at 339; *Aglikin*, 163 III. App. 3d at 431, 516 N.E.2d at 707. "In this manner the court determines who owns or controls church property in much the same manner that it would decide a secular property dispute." *Aglikin*, 163 Ill. App. 3d at 431, 516 N.E.2d at 707.

The *Brownlow* and *Marsaw* appeals involve a dispute over the control of Bethlehem. The *Brownlow*

plaintiffs contend that despite defendants' attempts to inject religious doctrine into plaintiffs' claims, this court must direct the trial court to analyze Bethlehem's articles of incorporation and the Act to determine the church's proper leadership, as it would for a nonreligious corporation. Plaintiffs argue that the articles vest control of Bethlehem's property in a board of directors elected by the church members and that the record does not support Richards' claims of ecclesiastical authority.

Defendants respond that this appeal necessarily involves an inquiry into Bethlehem's religious doctrine. They argue Bethlehem has always been under the hierarchical control of its pastor, who has "ecclesiastical control" over the church, and that Bethlehem's failure to observe corporate formalities requires this court to recognize the pastor as the church's sole authority.

After reviewing the substance of the *Brownlow* appeal, we agree with plaintiffs and conclude that the appeal does not ask this court to delve into religious ideology.[3] Therefore, we find that the trial court erred

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[3] Defendants argue that Bethlehem observes a "hierarchical" model of governance, with the pastor serving as the sole decision maker, and that LWAF has no authority to determine the church's members. Plaintiffs respond that if this court finds the case involves religious doctrine, the court must defer to the highest LWAF authority and that although Richards, as presiding bishop, claims to be the LWAF leader, the record reflects a question of fact as to that point. However, because we can resolve the *Brownlow* plaintiffs' claims without examining

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in ruling that the resolution of Brownlow requires a consideration of religious doctrine. As stated in *Jones*, under the neutral principles of law analysis, a court can review statutes and common law, as well as pertinent church charters, constitutions, bylaws and other evidence, to determine which party has legal control over a church corporation. The controversy at bar involves the validity of Bethlehem's constitution and defendants' actions in creating a new constitution in 2000. Bethlehem was incorporated in 1980 under this state's General Not For Profit Corporation Act. Annual reports were filed with the state every year through 2001. According to the "special provisions" attached to the original articles of incorporation, members of the church were to meet on the second Tuesday of July to elect directors. The provisions also describe a method to determine the church members who would receive notice of that meeting and be allowed to vote. Those provisions refer to the church as a corporation.

Defendants adopted a new constitution in July 2000 giving Richards the sole power to appoint board members and dictate the time and place of board meetings. They argue that for 22 years, Bethlehem has ignored the formal procedures set out in the

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religious doctrine, we need not address the hierarchy issue. See *Aglikin*, 163 Ill. App. 3d at 430, 516 N.E.2d at 707 ("[w]hen doctrinal or polity issues arise in the determination of a property dispute, the courts must defer to the resolution reached by the church's highest ecclesiastical authority.")

articles of incorporation and related provisions and contend that the history of the pastor's autonomous governance of the church had the effect of superseding the original articles of incorporation.

In light of these assertions, we remand *Brownlow* to the trial court for findings of fact necessary to a neutral principles analysis and a determination of whether plaintiffs or defendants should control Bethlehem. The court should determine whether the original constitution remains in effect or if the 2000 constitution was validly passed and supersedes the original constitution. A neutral principles analysis requires the court to consider the church's articles of incorporation, original constitution, bylaws and the previously discussed "special provisions," annual reports and minutes from annual meetings. In addition, the court should consider the provisions of the Act under which the church was incorporated.

Because we are remanding the *Brownlow* case for an analysis of the merits, we also reverse the trial court's granting of the *Marsaw* defendants' motion to dismiss the *Marsaw* plaintiffs' claims and also remand that case to the trial court for further consideration under the neutral principles test. Because the central issue in *Marsaw* also involves the validity of the current directors of Bethlehem, it would serve the interests of judicial economy and finality if *Brownlow* and *Marsaw* were consolidated upon remand and the claims in those cases were heard in the same proceeding.

Accordingly, the rulings of the trial courts in case no. 1-01-3164 and in case no. 1-02-1346 are reversed and remanded for further proceedings consistent with this order.

Reversed and remanded.

GALLAGHER, J. with O'BRIEN, P.J. and O'MARA FROSSARD, J. concurring.